

REPORT OF A DEBATE IN THE U. S. SENATE

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# REPORT

OF

## A DEBATE,

IN THE

SENATE OF THE UNITED STATES,

ON

A RESOLUTION FOR RECOMMENDING TO THE LEGILATURES  
OF THE SEVERAL STATES, AN AMENDMENT TO THE THIRD  
PARAGRAPH OF THE FIRST SECTION OF THE SECOND AR-  
TICLE OF THE CONSTITUTION OF THE UNITED STATES,  
RELATIVE TO THE MODE OF ELECTING A PRESIDENT AND  
VICE PRESIDENT OF THE SAID STATES.

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BY WILLIAM DUANE.

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## REPORT OF A DEBATE.

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Mr. CLINTON of New York, after a few prefatory observations on the necessity of designating the persons severally, whom the people should wish to hold the offices of President and Vice President of the United States, and stating that the state which he represented, as well as others of the union, had through the medium of their legislatures, strongly recommended the adoption of the principle, laid on the table the following motion, which he read ; and it was made the order of the day for the next day, and printed.

*Resolved*, by the Senate and House of Representatives of the United States of America, in Congress assembled, Two thirds of both Houses concurring, That the following amendment be proposed to the legislatures of the several states as an amendment to the constitution of the United States, which, when ratified by three fourths of the said legislatures, shall be valid to all intents and purposes, as part of the said constitution, to wit :

That the third paragraph of the first section of the second article of the constitution of the United States, in the words following, to wit : " The electors shall meet in their respective states and vote by ballot for two persons, of whom one at least, shall not be an inhabitant of the same state with themselves : And they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate : The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted : The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed, and if there be more than one who have such majority, and have an

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equal number of votes, then the House of Representatives shail immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list, the said house shall in like manner choose a President: But in choosing the President, the votes shall be taken by states, the representation from each state having one vote? A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice: In every case after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President; but if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President," be expunged from the constitution, and that the following paragraph be inserted in lieu thereof; to wit?

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least, shall not be an inhabitant of the same state with themselves; they shall name in distinct ballots, the person voted for as President, and the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate. The President of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President, shall be President, if such number be a majority of the whole number of electors appointed, and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot, one of them for President; and if no person have a majority, then from the highest on the list, the said house shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary for a choice. The person having the greatest number of votes for Vice-President, shall be Vice President; and in case of an

equal number of votes for two or more persons for Vice-President, they being the highest on the list, the Senate shall choose the Vice President from those having such an equal number; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

OCTOBER 22.

The order of the day being called for on Mr. Clinton's motion of the preceding day a desultory conversation took place, during which Mr. Butler offered another amendment, the object of which was to limit the service of any person chosen as president, to two successive periods of four years, this and some other verbal amendment were finally referred to a select committee, namely, Mr. Butler, Mr. Bradley, Mr. Clinton, Mr. Nicholas, Mr. S. Smith, to report and consider thereon.

MONDAY, OCTOBER 24.

Mr. BUTLER chairman of the committee to whom was referred the propositions for amending the constitution, made report, which being read.

Mr. DAYTON moved to strike out all that relates to the office of vice president, which after a short desultory debate was lost.

OCTOBER 25.

On motion ordered that the amendments to the constitution yesterday reported by the committee be the order of the day for to-morrow.

OCTOBER 28.

THE CLERK of the house of representatives informed the senate, that they had passed a resolution for an amendment to the constitution, for designating the choice of president and vice president, to which they desire the concurrence of the senate.

NOVEMBER 10.

Mr. BRADLEY stated in his place that the legislature of the state of Vermont had passed a resolution, that it is highly important that an alteration should take place in the second article of the constitution of the United States, which prescribes the mode of choosing a president and vice president and that a copy of the said resolution should be sent to their senators and representatives in congress respectively and the resolution being read, it was moved

That the senate do now proceed to the consideration of the report of the committee, made on the 24th of October

last, on an amendment to the constitution of the United States, respecting the election of president and vice-president. The question being required it passed in the negative—Yea 9—Nays 22.

The names being called for to the yeas and nays by one fifth of the senators present they stood as follows.

YEAS,		
Messrs. Anderson,	Hillhouse,	Tracy
Butler,	Olcott,	Wells,
Dayton,	Plumer,	White—9 Yeas
NAYS.		
Messrs. Adams,	Ellery,	Potter,
Bailey,	Franklin,	Israel Smith,
Baldwin,	Jackson,	John Smith,
Bradley,	Logan,	Stone,
Brackenridge,	Maclay,	Taylor,
Brown,	Nicholas,	Washington,
Cocke,	Pickering,	Wright—22 Nays.
Condit,		

[It may be proper to explain the apparent contradiction, in those who had been advocates for the amendment opposing to come to the immediate consideration. The fact is that by the resignation of Mr. Clinton a few days before there was not a certainty of *two thirds* of the votes present, as may be seen by the above votes. The advocates of the amendment therefore, wished to gain time so as to obtain the accession of some absent members—daily expected.]

#### NOVEMBER 16.

It was moved and agreed that the further consideration of the report of the committee to whom was referred the motion for amendments to the constitution of the United States respecting the election of president and vice president; and also the resolution of the house of representatives, on the same subject, be the order of the day for Monday next.

#### NOVEMBER 23.

The senate resumed the consideration of the report of the committee to whom was referred the motion for an amendment to the constitution, in the mode of electing the president and vice president of the United States whereupon the president *pro tem.* (Mr. Brown) submitted to the consideration of the senate the following question of order.

“ *When an amendment to be proposed to the constitution is under consideration, shall the concurrence of two thirds of the members present, be requisite to decide any question for amendments, or extending to the merits, being short of the final question?* ”

A debate took place on this proposition, tedious intricate and desultory which it was very difficult to follow and often to comprehend.

Mr. ADAMS was of opinion that on *all* questions involving the amendment two thirds of the votes were requisite, but not on any of the forms of proceedings on the subject.

Mr. DAYTON thought two thirds necessary on *all* questions upon which the amendment might ultimately depend. That the reasoning in the case of treaties would apply here as well in a single principle as on the aggregate.

Mr. FRANKLIN differed altogether from the last speaker. He considered all the preliminary proceedings, previous to the ultimate vote, subject to the decision of an ordinary majority, the motion here is a simple proposition involving the mode of proceeding in that house ; and could not affect the final vote on the amendment which must be carried by two thirds. The amendment will come fairly before the house for discussion by the vote of a simple majority, but subject the house to the control of two thirds in the first instance and discussion itself is obstructed, you can neither strike nor insert.

Mr. WRIGHT supposed that the forms of proceeding in that house hitherto observed would not be departed from ; it had never been considered that a preliminary question in proceedings was to be decided upon as a final question of amendment of the constitution. Such a form of proceeding would leave it in the power of a minority to arrest every proposition on such a subject before it passed the threshold ; and it might even put it in the power of the vice president himself to decide a question, though in the eye of the constitution he is not a member of the senate at all.

MR. MACLAY—this appears to me a very simple question, it is no other in fact than whether the house may or may not determine its rules of proceeding ; now he was convinced that the constitution had already settled this question, by declaring that each house shall be competent to establish its own rules. It was in the nature of things necessary, and it was fair to infer that in legislative proceedings the simplest form was the most eligible—who would apply a clumsy apparatus while one simple and sufficient was at hand ? The gentleman from N. Carolina (Mr. Franklin) had made the proper distinction ; treaties bore no analogy to forms of proceeding—we may object

to a treaty in the whole or in part, even after it has been negotiated and communicated to us by the proper authority. How we shall proceed upon measures originating with ourselves is a different subject.

Mr. DAYTON never suggested that we have no right to form rules for our own proceedings—he did not consider the question itself so much a constitutional one as of expediency.

MR. HILLHOUSE—it was a matter of indifference to him how the house proceeded on the question, so that the rules of the senate may not be embarrassed—the question appeared to him now to be principally the best mode of taking up the subject for diliberation.

MR. TAYLOR—the gentleman from Jersey (Mr. Dayton) has acknowleged and the gentleman from Connecticut (Mr. Hillhouse) have concurred in the sentiment, that this amendment is not so much a constitutional question as one of expediency and form. In this view the gentlemen must consider that they cannot take from the vice president a right which he possesses to a constitutional equality in the election, as the constitution declares (art. II. § I.) that the president “shall hold his office during “the term of four years, and together with the vice presi-“dent, be chosen for that term.” No right of expediency can find room in this place ; if there is any, gentlemen will of course shew it. The gentleman from Pennsylvania (Mr. Maclay) had felt no doubt on his mind on the subject.

MR. BUTLER it never was intended by the constitution that the vice president should have a vote in altering the constitution, whatever of the arguments of gentlemen relate to that point falls to the ground. The question now before the house is whether when a general proposition is brought up, shall the same number of two thirds be requisite to decide upon its admission as upon the subsequent and perfecting vote. In his opinion the same number was necessary. So on a motion formerly made by a gentleman from Jersey (Mr. Dayton) for striking out all that related to the vice president he thought two-thirds were necessary when a vote of that kind, as the striking out would go to an alteration of the constitution. On minute alterations of the letter or phraseology which did not involve the principle perhaps a simple majority would be sufficient.

MR. COCKE considered the house as competent to the formation of its own rules ; and was opposed to this

new mode of proceeding, evidently calculated only to embarrass.

MR. HILLHOUSE thought the decision on this question perfectly analogous to the cases which arise on treaties. Suppose that two thirds of the senate present concur with the proposition of the bill now before the senate from the house of representatives, and a majority agree to strike out a part.

MR. WRIGHT—gentlemen cannot or will not keep it in mind that the proposition before the house is not an alteration of the constitution, but the formation of a proposition upon which two-thirds of the house must ultimately decide and after which decision must go to the several states and depend for its final adoption upon three-fourths of the states. It does not, as the gentleman from Connecticut (Mr. Hillhouse) seems to assume require two-thirds of the senate to prepare and propose an amendment to a treaty; it is the principal confirmation or ratification only that requires two-thirds.

GEN. JACKSON was not averse to a postponement; tho' he did not approve of the idea of the gentleman from Jersey, (Mr. Dayton) concerning the abolition of the vice president's office. If the senate would postpone, a committee might be appointed who would search for precedents and report by Monday or on some other day. He moved to postpone—seconded by Mr. Bradley—lost, ayes 15, noes, 16.

MR. PICKERING—there appears to me so close an analogy between the proposed amendment and the case of treaties, that it ought to govern. The striking out of a part of the constitution must be considered as an amendment, for if a part is struck out it is no longer the same thing—he did not approve of subjecting a constitution to repeated alterations.

MR. ISRAEL SMITH—This appears to be a very important constitutional question; and in fixing the principle care is requisite, though he did not see why it should not be done as early as possible. All our details of bills go thro' the forms of reading and engrossing; they are read and considered section by section and clause by clause, so that nothing shall be admitted but by a majority. Then why not in the debates of an amendment use the same precautions; if you admit amendments to the constitution by a common majority, it appears that there is not the same precaution.

Mr. TAYLOR—the gentleman's arguments were entitled to was answer ; but a short one would be sufficient. The analogy with treaties is no more perfect than that with relation to ordinary legislative acts. Treaties originate with the executive, with a power of which there is always entertained a salutary jealousy. On the other hand a law must have the consent of the president after it has passed both houses, if the president refuses his consent the whole is incohere, and *two thirds* of both houses may *non obstant* pass the law without that consent ; and here only the cases are analogous ; we may proceed to give a law perfection in its preliminary stages, so may we discuss an amendment ; but to the ultimate perfection of the thing two thirds are required. If the doctrine held by some gentlemen were to prevail, it would difficult ever to amend the constitution be its imperfections ever so great.

Mr. HILLHOUSE was convinced by the arguments of the gentleman from Vermont, (Mr. T. Smith) that this, was a question of the first magnitude. In the case of a law to which the President denies his concurrence, when it is returned to both houses, no amendment can be made thereto, it must pass altogether by two thirds or is lost. Again, if you were to move to strike out a part of the amendment, it would appear by the vote on your journals, that the question had not been decided by two thirds.— In the passage of laws it is understood that all parts of a law must have a majority of votes, but it is also well understood that different parts of the same law will not obtain the same number of votes, and that some will vote, against particular parts who approve of the rest ; yet that the whole must have a majority. He never doubted that a proposition for an amendment may be admitted by a majority for discussion ; but it was no more a conclusion that two thirds were not necessary on a vote involving the principle during the discussion, because there was to be a final vote, than that two thirds would not be necessary on the last vote here, because it is not final in relation to the other house.

Mr. ANDERSON proposed to postpone to to-morrow.

Mr. TRACY also wished to postpone to next day.

Mr. NICHOLAS hoped the question would be decided before the house rose—and as it was a simple question of order be wished the wholesome rule of the other house to be pursued, to decide the questions of order without debate.

The question to postpone being taken was lost Ayes 14  
Noes 16.

The proposition offered by the president was then called up for decision—whether two thirds were necessary Ayes 13—Noes 18.

MR. BUTLER desired to know from the president if the question now decided did not require a majority of two thirds.

THE PRESIDENT said according to rule of the house, the question required only a principal majority to decide it.

MR. DAYTON's motion for striking out what related to the vice president was called for and the question taken on striking out—Ayes 12—Noes 19.

The report of the committee at large being then under consideration.

MR. NICHOLAS moved to strike out all following the 7th line of the report to the end for the purpose of inserting the following.

"In all future elections of president, and vice president, the electors shall name in their ballots the person voted for as president, and in distinct ballots, the person voted for as vice president, of whom one at least shall not be an inhabitant of the same state with themselves. The person voted for as president, having a majority of the votes of all the electors appointed, shall be the president; and if no person have such majority, then from the three highest on the list of those voted for as president, the house of representatives shall choose the president in the manner directed by the constitution. The person having the greatest number of votes as vice president, shall be the vice president; and in case of an equal number of votes for two or more persons for vice president, they being the highest on the list, the senate shall choose the vice president from those having such equal number, in the manner directed by the constitution; but no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States."

MR. ADAMS objected to number *three* instead of 5, and wished five to be restored as the house of representatives had already agreed to it—he asked for a division of the question—which was not agreed to.

Upon the question for striking out being put it was carried without a dissenting voice, and the amendment of MR. Nicholas adopted in the report, leaving the number blank.

MR. DAYTON moved to fill up the blank with the number five—upon the question being put it was lost only eleven rose in the affirmative. Lost

MR. ANDERSON moved to strike out the word two in nineteenth line—Ayes 6—Lost.

GEN. S. SMITH then moved to fill the blank with the word three which was carried—Ayes 18 to 13.

MR. ADAMS suggested an objection to the amendment as it stood which appeared to arise out of the treaty of cession of Louisiana. His original idea was adverse to the limitation to natural born citizens as superfluous; but as it stood the terms upon which Louisiana was acquired had rendered a change necessary, for it appeared to him that there was no alternative, but to admit those born in Louisiana as well as those born in the United States to the right of being chosen for president and vice president.

Mr. BUTLER said that if there was a numerous portion of those who were already citizens of the U. S. who can never aspire to nor be eligible for those situations under the constitution, he did not see how this supposed alternative could be upheld. The people of Louisiana, under the treaty and under the constitution will clearly come under the description of naturalized citizens. While he was up he would take the opportunity of speaking to the question at large, and to examine the motives which produced this amendment; the principal cause of solicitude on this subject he understood to be the base intrigues which were said to have been carried on at the presidential election.

Mr. WRIGHT called to order—and a short altercation on the point of order took place.

Mr. BUTLER proceeded.—He had on a former day asked if he might in this stage of the discussion take a view of the whole subject—the house had decided in the affirmative. When the proposition was first laid before the house, he had felt a disposition in favor of it; his mind had been shocked by those base intrigues, which had taken place at the late presidential election, and he was hurried by indignation into a temper which a little cool reflection and some observation on a particular mode of action in that house, had checked and corrected, and finally convinced him that much caution was required in a proceeding of that nature, and that in all human probability such a scene of intrigue may never occur

again, that it became questionable whether any steps whatever were necessary. Upon a careful review of the subject, it appeared to him that an alteration might make matters worse; for though at present there has been afforded, by a course of accidents and oversights, room for intrigue, it would be preferable to leave it to the care and discretion of the states at large to prevent the recurrence of the danger, than put into the hands of four of the large states the perpetual choice of president, to the exclusion of the other thirteen states. It was a reasonable principle that every state should in turn have the choice of the chief magistrate made from among its citizens.— The jealousy of the small states was natural; and he would not tire the house by bringing to their ears, arguments from the history of Greece, because the subject must be familiar to every member of that house, and indeed to every school boy. He would not weary them with the painful history of the conflicts of Athens and Sparta, for the supremacy of Greece, and the fatal effects their quarrels and ambition on the smaller states of that inveterate confederacy of republics.— Their history is that of all nations in similar circumstances—for man is man in every clime, and passion mingles in all his actions—if the smaller states were to agree to this amendment, it would fix for ever the combination of the larger states,— and they would not only chuse the president but the vice president also in spite of the smaller states. It would ill become him who had been a member of that convention which had the honor of forming the present constitution to let a measure such as the present pass without the most deliberate investigation of its effects. Before the present constitution was adopted all the states held an equal vote on all national questions; by the constitution their sovereignty was guaranteed, and the instrument of guarantee and right he had subscribed his name to as a representative of S. Carolina, and had used all the zeal and influence of which he was possessed to promote its adoption. To give his assent to any violation of it, or any unnecessary innovation on its principles would be a deviation from morality.

He had heard it said with confident boldness that experience had shewn the necessity of amendment—and that the Constitution had already undergone correction. But gentlemen should shew him that healing a wound

and cutting off a limb were operations not of a different nature and different degrees of danger. He did not mean, nor did he apprehend that the proposed amendment would cut off any state in the union, but he was persuaded that it would cut off the weight, and the influence of many of the small states.

He had been told that the people of the United States called for this amendment. How had this sense been collected? It was a difficult matter to collect their sense; the great variety of habits, the diversity of climates, the space over which they are spread; the different modes of education, and way of thinking, all render it difficult to ascertain the general sentiment, and he who says the people at large wish for this amendment, in my judgment hazards greatly the respectability of character.

It is urged that the people did feel great indignation at the scenes which were exhibited in the house of representatives on a former election—and that the people might be hurried into strong and dangerous measures to prevent the recurrence of scenes so disreputable to republican government. But if the people knew and would see all the points tending to one extreme line, they would take care to enquire whether in endeavouring to avoid a weather shore they had not forgotten the lee one. If the people are to have a master, Mr. president, it is indifferent whether they are to be bowed down by an insolent individual oligarchy or a proud and haughty aristocracy of states; if in the change of masters, the only change that is experienced is a change of habits.

But where, sir, is the danger of letting the choice ultimately go to the legislatures. If there is danger it is certainly wrong to send it to any legislature; yet we find the constitution admits of considerable legislative authority in the organization of various constitutional powers; the fact carries with it some evidence of the principles of that instrument. What is the purport of this amendment but to cut off a part of that solemn compact the result of four long months deliberation, where low ambition or the pride of states never found admission, and where disinterested patriotism and the light of virtue only found access.—But sir, there are motives operating in this body and promoting this amendment, which, though not prominent are powerful; it is said if you do not alter the con-

stitution, the people called federalists will send a vice-president into that chair; and this in truth is the pivot upon which the whole turns. When we were as republicans out of power, did we not reprobate such conduct? Shall we then do as they did? Shall we revive party heat? No, he hoped not; but that by a just and mild policy we should evince that we would do as we would be done by.

The question was immediately taken on the report and carried—Ayes 20—Noes 11.

Mr. ADAMS said that though he had voted for the amendment he disapproved of the alteration from *five* to *three*. He felt, however, though a representative of a large state, a deep interest in this question—was there no champion of the small states to stand up in that house and vindicate their rights.

MR. DAYTON was not here as champion of the small states—but as the representative of one of them he was ready to enter his protest against being delivered over bound hand and foot to four or five of the large states.—The gentleman from South Carolina had offered arguments on the subject irrefutable. The little portion of influence left us he has demonstrated to be now about to be taken away, and the gentleman from Massachusetts, (Mr. Adams) after aiding the effort with his vote, has taken mercy upon us and after he has helped to knock us down, asks us why we do not stand up for ourselves.

GEN. S. SMITH was not surprised to find those who were members of the old congress, in which the subject of large and small states was frequently agitated, familiar with the subject of those days. Under the present constitution he had been ten years in congress and had never heard the subject agitated nor the least ground given for any apprehension on this subject; he had seen the small states possess all the advantages secured to them without even a moment's jealousy. The state he represented, was once considered a large state, the encrease of others in population, however, had rendered it properly belonging to neither class; it was an intermediate state; but from the natural progression of the union it must be ranked among the small states. In this view then he could speak dispassionately, and the small states could not with reason be apprehensive that a state, which must speedily take rank among them, could be

indifferent to their rights if there were the least cause for apprehension..

He had moved for the insertion of *three* instead of *five*; with this precise and special intention—that the people themselves should have the power of electing the president and vice president; and that intrigues should be thereby for ever frustrated. The intention of the convention was that the election of the chief officers of the government should come as immediately from the people as was practicable, and that the legislature should possess the power, only in such an exigency as accident might give birth to but which they had not considered as likely to occur. Had it not been for these considerations the large states never would have given up the advantages which they held in point of numbers. If the number five were to be continued, and the house of representatives made the last resort, he would undertake to say that four times out of five the choice would devolve upon them. Diminish the number to *three* and the compromise of two and two between the opposing parties which has heretofore prevailed will be superseded by an opposition of one on each side for president and a third between both for vice president. The question of small and large state interests is not at all, involved in this question; it is a mere matter of imagination; and if it were at all real, it would perhaps be found to operate differently from what is supposed.— There are many of the states which are now small in reference to their population, which must already feel the influence, if any exists of their being very soon likely to become large states—Georgia, Tennessee and Kentucky were of this description; in less than ten years these states will be larger than many now called large states—and their circumstances alone would be a sufficient guard against those dangers apprehended.— He would be one of the last to doubt the virtue and the wisdom which framed the present constitution; but like other gentlemen, he was aware of the fallibility of the wisest of mankind; the founders of that constitution had taught him the important lesson, for they had provided in that instrument, a remedy for their own inexperience or fallibility; and time has in this instance, as in numerous others, proved their uncommon wisdom, for evils have arisen which though they could not foresee, they have provided the means to correct them;—

they could not have foreseen the danger to which the country was exposed at the late election ; they could not have believed that at so short a distance from the foundation of the constitution, the country escaped from a civil war, only from the prevalence of that kind temper and magnanimity in the legislature; which prevailed in the convention itself. And shall we not do all that is in our power to avoid the recurrence of similar danger. Had the gentleman from South Carolina, (Mr. Butler,) been present at that critical period, he would have felt, as many of his friends felt, a serious and restless anxiety. Two candidates before the House, party spirit high—the one determined to support the candidate upon whom public affection and confidence had unequivocally centered, the other seeking to place in the executive chair, not a candidate of their original choice, but a candidate through whom they wished to retain at least a share of power ; unsuccessful in that effort bringing forward a proposition to create a president—and how, by a law to be passed for the purpose, and in which the person was to be named. Leaving the votes and choice of the people out of consideration altogether. Had this been effected, what other result would follow, but civil war. Without pretending to be in the counsels of either party on that occasion, he believed that civil war was seriously apprehended, and so much so, that he felt perfectly convinced, that had a choice been made in the way proposed, and a person could be found to accept it, that his head would not have remained on his shoulders for twenty-four hours afterwards. Dangers of this kind he was solicitous to avoid ; and by that mild, and benevolent mode provided by the constitution, that of amendment to the constitution.

MR. HILLHOUSE. In avoiding rocks he feared we were steering for quicksands. The evils that are past we know ; those that may arrive we know not. The object proposed is to provide against a storm, phenomena not rare or unfrequent in republics. You are called upon to act upon a calculation that all the states in the union will vote for the same persons, or that each of two parties opposed in politics will have an individual candidate. Suppose the two candidates who had the highest votes on the late election had been the champions of two opposite parties, and that neither would recede, what then would be the consequence ; according

to the gentleman from Maryland, a civil war ! When men are bent on a favorite pursuit, they are too apt to shut out all consequences which do not bear out their object. Thus gentlemen can very well discover the danger they have escaped, but they do not perceive that the opposition of two powerful candidates, gives beside the hazard of civil war, the hazard of placing one of them on a permanent throne. The first magistracy of this nation is an object capable of exciting ambition ; and no doubt it would one day or other be sought after by dangerous and enterprizing men. It was to place a check upon this ambition that the constitution provided a competitor for the chief magistrate, and declared that both should not be chosen from the same state. Here also was a guard against state pride, and this guard you wish to take away ; and what will be the consequence ? Instead of two or three or five, you will have as many candidates as there are states in the union. By voting for two persons without designation, the states stood a double chance of a majority, besides the chance of a majority of all the states in the house of representatives. For once or twice there may be such an organization of party as will secure for a conspicuous character the majority of votes. But that character cannot live always. The evil of the last election will recur and be greater because the whole field will be to range in.

He hoped this amendment would not be hastily adopted, the subsisting mode was the result of much deliberation and solemn compromise, after having long agitated the convention. It is now attacked by party ; whatever gentlemen may say to the contrary ; the gentleman from South Carolina has confessed it. If gentlemen will suffer themselves to look forward without passion great good may come from the present mode ; men of each of the parties may hold the two principal offices of the government ; they will be checks upon each other ; our government is composed of checks ; and let us preserve it from party spirit which has been tyrannical in all ages. These checks take off the fiery edge of persecution. Would not one of a different party placed in that chair tend to check and preserve in temper the over heated zeal of party ; he would conduct himself with firmness because of the minor party ; he would take care that the majority should have justice, but he would also guard the minority from oppression. If we cannot destroy party we ought to place every check

upon it. If the present amendment pass nine out of ten times the election will go to the other house, and then the only difference will be that you had a comedy the last time, and you'll have a tragedy the next. Tho' it was impossible to prevent party altogether, much more when population and luxury encrease, and corruption and vice with them, it was prudent to preserve as many checks against it as was practicable. He had been long in congress and saw the conflicting interests of large and small states operate; the time may not be remote when party will adopt new designations—federal and republican parties have had their day—and their designations will not last long; and the ground of difference between parties will not be the same that it has been; new names and new views will be taken, it has been the course in all nations.— There has not yet been a rotation of offices in which the small states could look for their share, but the time may, it will come when the small will wrestle with the large states for their rights. Each state has felt that though its limits were not so extensive as others, its rights were not disregarded. Suffer this confidence to be done away, and you may bid adieu to it; three or four large states will take upon them in rotation to nominate the executive, and the second officer also. This will be felt. A fanciful difference in politics is the bug bear of party now, because no other no real cause of difference has subsisted. But remedy will create a real disease. States like individuals may say we will be of no party, and whenever this shall happen blood will follow.

MR. BRADLEY moved an adjournment—agreed.

NOVEMBER 24.

The consideration of the report on the amendment to the constitution being taken up; the amendment as directed to be printed on the preceding day was taken up, and read as follows—

1 *Resolved*, by the senate and house of representatives of the  
 2 United States of America, in congress assembled, two thirds  
 3 of both houses concurring, that the following amendment be  
 4 proposed to the legislatures of the several states as an amend-  
 5 ment to the constitution of the United States which when ra-  
 6 tified by three fourths of the said legislatures, shall be valid to  
 7 all intents and purposes as a part of the said constitution, viz.  
 8 In all future elections of president and vice president, the  
 9 electors shall name in their ballots the person voted for as presi-  
 10 dent, and in distinct ballots, the person voted for as vice presi-  
 11 dent, of whom 1 at least shall not be an inhabitant of the same  
 12 state with themselves. The person voted for as president having

13 a majority of the votes of all the electors appointed, shall be  
 14 the president; and if no person have such majority, then from  
 15 the 3 highest on the list of those voted for as president, the  
 16 house of representatives shall choose the president in the man-  
 17 ner directed by the constitution. The person having the greatest  
 18 number of votes as vice president, shall be the vice president;  
 19 and in case of an equal number of votes for 2 or more persons  
 20 for vice president, they being the highest on the list, the senate  
 21 shall choose the vice president from those having such equal  
 22 number, in the manner directed by the constitution; but no per-  
 23 son constitutionally ineligible to the office of president, shall be  
 24 eligible to that of the vice president of the United States.

MR. BRADLEY did not approve of the amendment as it now stood; he could not see why the vice president should not be chosen by a majority as well as the president. He considered the possibility of the vice president becoming president by any casualty, as a good reason for both being chosen by the same ratio of numbers. If it should be carried as the amendment now stands, the office of vice president would be hawked about at market and given as change for votes for the presidency. And what would be the effect, that it might so happen that a citizen chosen only for the office of vice president might, by the death of the president, tho' chosen only by a plurality become president and hold the office for three years eleven months and thirty days. He did not approve of many arguments which he had heard on the preceding day, and however disposed to concur in the principle of designation for the two offices, he could not give it his vote in the present shape—he would in order to render the report more congenial with his wishes move to strike out the following words beginning with the words shall in the 18th line to constitution in the 22d—he was seconded.

MR. TRACY opposed the striking out, as not in order, it being an amendment to an amendment already received by the house—he thought however it would be in order to reconcile the whole, and then any part might be amended.

THE PRESIDENT said that the motion for amending the amendment was not in order; but if the member from Vermont, or any other gentleman of the majority on the question yesterday, chose to move for a recommittal, or even to refer the report to a select committee, it would be in order.

MR. BRADLEY said that he held it to be a sound truth that in legislating we ought not to be afraid of using words to express our meaning as far as language could

go; he thought that there was a deficiency of words and a deficiency of meaning, which if suffered to go abroad would be attended by great inconvenience. He would move for the reference of the report to a select committee and that they be instructed to insert in the room of the words he before proposed to omit, the words—*if such number be the majority of the whole number of electors appointed, and if no person have a majority, then from the two highest on the list the senate shall chuse the vice president.*

He would also move that the committee be instructed to insert after the word president in the 6th line, the following words—*But in choosing the president the votes shall be taken by states, the representatives from each state having one vote; and there shall be two thirds of the representation of the states to form a quorum.*

MR.—WRIGHT to give the gentleman an opportunity to discuss his subject, as one of the majority on the question of yesterday he moved for an reconsideration of the whole report.

MR. BRADLEY was not disposed to favor reconsiderations, the custom he took was borrowed from the town-meetings, to the eastward; if this practice were to be pursued, we should be called upon at the end of a session to reconsider the proceedings of the first, and reduce the Senate even below a New England town-meeting.

MR. ADAMS had no objection to a recommitment, as he considered that one or two further alterations were extremely necessary. He could foresee a probable case which he thought ought to be provided against. And one or two simple expressions would answer the end.—He could conceive no election to take place under the form proposed, and the election of a chief magistrate was not in his mind a matter of small moment. He would suppose that there should not be three persons voted for; or that though three or more should be voted for, that none should have an actual majority.—What would your situation be then? He would suppose another case, that there were two who should have the highest, and yet an equal number of votes, and that there were to be a third and fourth who should have equal numbers also—how could the *three* highest be found in this case, when the third and fourth persons were equally high in votes.

MR. TAYLOR was against the recommital, because he had no doubt that the ingenuity of gentlemen would upon amendment in a committee discover new defects and motives for amendment. The gentleman from Vermont (Mr. Bradley) had however stated a new idea; the constitution does not require a majority in the choice of a vice president, after the choice of president shall have been made but says "in *every case*, after the choice of a president, the person having the *greatest number* of votes shall be the vice president"—purposely omitting "a majority of the whole," as in the case of the president, but the gentleman who disapproves of amending wishes to carry amendment farther and to render the difficulty more difficult. He would oppose recommitment, for if this new principle were necessary the gentleman could introduce it in the shape of a new amendment to the constitution. With respect to the simple expressions which the gentleman from Massachusetts proposed to insert; and which appeared to him to promise with so much facility such great advantages, he should be glad to see them introduced. But he thought that in one case as well as in the other, of those which he had suggested as necessary to provide against, no difficulty whatever existed. For it appeared plain enough to him that if only two had the highest numbers and equal; that one of them two would be preferred to an extension of choice to a third who had not an equal number of votes, and that the selection of one of them two would be in fact a choice from one of the three highest so in the case of the third and fourth, though they might have also an equal number of votes, he could perceive no difficulty, because if there were even four of them, the choice out of any three of the four would be a correct choice.

MR. DAYTON—gentlemen appear to forget that the chair has decided that no words can be introduced into the amendment already adopted, and frequently that a recommitment is the only course left. The gentleman from Virginia, (Mr. Taylor,) objects to the proposition of the gentleman from Vermont, (Mr. Bradley,) upon the ground that it seems too sacred to touch it as there exists already a different principle in the constitution; but though he considers it too sacred, he nevertheless recommends as a remedy the introduction of a new resolution separably and in opposition to that sacred prin-

ciple. We have been hitherto trammelled by incongruous rules—but here an amendment is proposed to be got rid of by a side wind.

MR. TRACY could not see why a Vice President should not be chosen by a majority instead of a plurality, as well as President—he was for the recommitment.

GEN. S. SMITH supposed that if the motion of the gentleman from Vermont, should be lost, it would be then in order to move a reconsideration. He could not see with the gentleman from Vermont, any thing exceptionable in town-meetings, nor could he discover that town-meetings in New England were more exceptionable than elsewhere, unless there was any thing specially wrong transacted at them. The practice of reconsideration was familiar in all legislative bodies ; and it was in the nature of legislation that it should be so ; for new knowledge as well as new circumstances render it necessary to reconsider and revive long established laws.

The motion for referring to a select committee was then lost—ayes 15, noes 16.

MR. WRIGHT then renewed his motion for a reconsideration.

MR. BUTLER disapproved of the rule of the house which authorized this mode of reconsideration in so loose a way ; he thought that no subject discussed should be reconsidered without an unanimous vote ; if that practice was pursued it would prevent a great abuse and waste of time ; in the present mode it matters not whether it is a thin or a full house ; any member of the majority has the house at his mercy.

MR. TRACY did not comprehend the meaning of the gentleman in demanding a reconsideration—did he mean to reconsider the whole day's work ?

GEN. S. SMITH said his colleague meant as he meant, to reconsider the amendment made yesterday to the report of the committee.

MR. TRACY did not suppose that the house was to reconsider the rule of order as to the majority—nor six or seven other motions ; but unless the gentleman *specifies* the subject to be reconsidered, the motion will necessarily comprehend the whole day's work.

MR. DAYTON understood it to be confined to the amendment of the resolution.

MR. PLUMER requested the motion to be committed to writing which was done and the motion was carried.

MR. BRADLEY then renewed his motion as before for striking out and inserting after the 18th line—this amendment he thought of great importance, as under the constitution as it now stands the vice president must be a person of the highest respectability well known and of established reputation throughout the United States; but if the discriminating principle prevails without some precautions such as the amendment proposed, that assurance would be lost; and he should not be surprized to hear of as many candidates for vice president as are states, as the votes for president, would be offered in truck for votes for vice president and an enterprizing character might employ his emissaries through all the states to purchase them, and your amendment lays the foundation for intrigues. He was desirous that he who is to be set up as candidate for the vice president should as at present be equally respectable, or that there should be none; that at least he should be the second man in the nation; adopt the designating principle without the most guarded precautions, and you lose that assurance.

MR. HILLHOUSE accorded with the gentleman's amendment as it naturally grows out of the principles of the report. There was not a word in the constitution about *voting for the V. President*, no vote in fact is given for such an office; the alteration to designation alters the whole thing; and as the gentleman has expressed will send the V. P. office into market to be handed about as change for the candidate supported by larger states; he would prefer leaving the choice of president and vice president at once to the larger states than take it in this way. In calm times any government may work well, but he wished in calm times to provide against storms. If we designate any then designate both and on equal terms.

MR. WRIGHT's pursuit was the discriminating principle, or the designating principle in its most simple and efficacious form; but this by no means authorized the abridging of the rights of the small states; nor could it be shewn in argument that the designating principle would have such an effect; the provision that not more than one of the two candidates should be voted for in the several states, shewed that the lesser states were equally guarded with the rest; upon the incidental election in the house of representatives the same guardianship of the smaller states was conspicuous—the union was the result of a fair compromise, and the designation in no way

departs from it. The amendment proposed, so far as it went to decide the choice of vice president by a majority instead of a plurality, as the constitution now stands, he approved, as it was the principle most consonant with the spirit of representative democracy, that no officer should be elected but by a majority; as it now stands admitting a choice by a plurality, there were contrary principles received. He saw no difficulty in the event of an election of vice president not being made, as it might be done by this house. The idea he acknowledged he had borrowed from the resolutions of March 4, 1800, passed by the legislature of Massachusetts, and forwarded to their representatives in congress; the recommendation of an alteration in this part of the constitution originated in Vermont, but was adopted and forwarded by Massachusetts.

*Commonwealth of Massachusetts.*

IN SENATE, Feb. 28th, 1800.

Whereas the legislature of the state of Vermont, on the fifth day of November, last, passed two resolves in the words following viz.

STATE OF VERMONT.

*In General Assembly, Windsor, November 5th, 1799.*

Resolved, That the senators and representatives of this state in the congress of the United States be, and they hereby are requested to use their best endeavours, that congress propose to the legislatures of the several states the following amendment to the constitution of the United States, viz. That the electors of president and vice president in giving in their votes, shall respectively distinguish the person whom they desire to be president from the one they desire to be vice president, by annexing the words president or vice president, as the case may require, to the proper name voted for; and the person having the greatest number of votes for vice president, if such number be a majority of the whole number of electors chosen, shall be vice president; and if there be no choice, and two or more persons shall have the highest number of votes, and those equal, the senate shall immediately choose by ballot one of them for vice president;— and if no person have a majority, then from the five highest on the list, the senate shall in like manner choose the vice president but in choosing the vice president, the votes shall be taken by states, the senators from each state having one vote. A quorum for this purpose shall consist of a member or members from two thirds of the states; and a majority of all the states shall be necessary to a choice. And in case the senators and representatives of this state in congress, shall find that the aforesaid amendment is not conformable to the sentiments of a constitutional majority of both branches of the national legislature, they are hereby requested to modify the same as to meet the sentiments of such majority.

*Provided*, however, that any amendment which may be agreed on, shall oblige the electors to designate the person they desire to be President, from the one whom they desire to be Vice President.

*Resolved*, That his excellency the governor be requested forthwith to transmit the same to the supreme executives of the several states. Which resolves have been communicated by the supreme executive of the state of Vermont, to the supreme executive of this commonwealth.

*Resolved*, That the legislature of this commonwealth have a high sense of the wisdom and patriotism of the legislature of the state of Vermont, and accord with them in the opinion, that it is expedient that the constitution of the United States be amended in the manner contemplated in the aforesaid resolves of the legislature of the state of Vermont.

*Resolved*, further that the senators and representatives of this state in the congress of the United States be, and they are hereby requested to adopt the necessary measures to effect the amendment aforesaid.

*Resolved*, further that his honor the lieutenant governor, be, and he is hereby requested to communicate the foregoing resolves to the supreme executive of the state of Vermont, and also to transmit copies thereof to the senators and representatives of this commonwealth in the congress of the United states.

[Approved, March 4th, 1800.]

The propriety of this house chusing its president he considered as perfectly conformable to the principles of the constitution. The house of representatives never votes by states but when the election of president devolves upon them ; the senate never ; but he did not see why it should not be so in the event of a non election of vice president by the want of a majority. As to the number from which the choice was to be made, he cared not whether it were 3 or 5—he considered the principle of designation as every thing ; and the number but as trimmings to the cloth. He would recommend it to the gentleman from Vermont so to alter his amendment as to render an election in the house the resort, in the defect of a majority, he was for the choice being made not in the numerical capacity of the members, but by states.

MR. BRADLEY considered the provision of voting in the house of representatives by states, as a good one in the particular case. But he did not think it necessary here, because this house already represents states equally ; a member or members, may, it is true, be absent, but then that is a great neglect of duty, and subjects to heavy responsibility the absent member. Under the present order of things a state may have no vote, tho' both its representatives are present, for A. and B. may

vote differently; if five or six states were in the same predicament, a case not very unreasonable to suppose, then there would not be a majority;

The question was then put and Mr. Bradley's motion carried.

MR. BRADLEY then moved his amendment in the 16th line as above cited, to be inserted in the place of the words—"in the manner directed by the constitution"—He observed this amendment would render it necessary in order to avoid confusion to repeal the section which comes within its purview; if no manner of election is pointed out, it will be impossible to tell what construction to put upon it; and instruments of this important nature cannot be expressed in language too explicit. If a provision such as is offered should not be adopted might not the house of representatives consider themselves at liberty to chuse by the numerical vote? It is true that any vote we may here give will not alter the principle, but it is proper that provision be now made that no mistaken interpretation take place at a future time.

MR. ADAMS—if he understood the state of the question, the principle relates in the most important degree to the *numbers*, from which the choice should be made—as it now stood he could not say whether three or five was the number to be chosen from; he hoped the senate would determine whether the choice was to be made from the highest numbers in all cases; or to make provision specially for either case of 5 or 3; if the choice was to be fixed by the number 5, then he conceived that the words *from the whole number if less than five*, should be introduced. He was himself in favor of the number 5, because by taking 3 you reduce the power of the small states, and their chances in the House of Representatives; for certainly it is a much higher power to elect from 5 than from 3. He questioned whether the House of Representatives would part with that number, for in general popular bodies are very tenacious of power, it is in their nature, and so in a degree are Senates.

MR. DAYTON said the remarks of the gentleman (Mr. Adams) in favor of small states were too precious to be lost; but he wished they had been reserved for the proper place; with regard to number likewise, it was out of place, as there was no reference to numbers in the motion of the gentleman from Vermont.

The second amendment of Mr. Bradley was then put and carried.

MR. COCKE called for a consideration of the vote of the preceding day on the number in the 15th line which he moved to strike out, in order to afford gentlemen the opportunity they seemed to wish for to discuss the number.

The motion was carried, and a blank left for the number.

NOVEMBER 24.

MR. COCKE—gentlemen had now full latitude for discussion and he wished it would be settled so far as concerned the number this day ; he could not but express his sorrow, however, to hear gentlemen making such a stir about supposed dangers to the small states ; —this kind of clamour is worn thread bare, and could not pass muster much longer ; on all occasions we hear in one shape or another this opposition of states brought forward—lately it was the west was in danger, at other times the south is arrayed against the east ; and now we are called upon to believe the large are going to swallow the small states ; gentlemen must have a large swallow indeed who can take in these things ; another gentleman from Connecticut (Mr Hillhouse) presents us another horrid spectacle, he tells us that those states must be merged in blood, and truly the remedy by which all this blood-shed is to be prevented, he tells us is the election of a federal vice president ! He was not surprised at this kind of remedy being recommended but he thought it little better than a quack medicine.— He believed that if the remedy was accepted, the day would not be far distant when they would come forward with another, and tell us that a federal president was necessary to our existence. He for one was not for taking the remedies of those who when disorder prevailed instead of curing them created new ones. Gentlemen would not a few years ago listen to any advice or even complaints of a minority ; they think now as they said then that there was no talents or virtue in the country but what they possess ; and they now tell us that minorities should govern. While he stood in that house he would never submit to be governed by a minority, especially a minority, which when apart of the majority, declared the then minority deserved a dungeon. We shall not treat them in that way, they shall experience no persecution we will even endeavour to make their situation comforta-

ble for them, but they must not expect our aid to set aside majorities or to depart from the principles of the constitution.

MR. HILLHOUSE—If the gentleman alludes to me, he is mistaken—

MR. COCKE—No gentleman in this house can be a stranger to my meaning—he had proposed to insert the number 5 in the blank—

MR. DAYTON seconded the motion, but not for the reasons offered by the gentleman from Tennessee.

MR. COCKE—As I cannot pocket that gentleman's superior reason, I must be content to make use of that plain reason God has given me. He had heard it said on that floor, that the object of our amendment was to prevent a federal vice president being elected. For his personal feeling on that subject he could account: he entered into no examination of other gentlemen's feelings, but for himself he would avow that he was actuated by a strenuous wish to prevent a federal vice president being elected to that chair; he could not subdue his memory, and he would not wish to see any man chosen whose attachment to republican government he doubted; he was against the election of any man who differed from the majority; he was as adverse to persecution as any man, he could not persecute, but he would while he had breath, guard against all men and all parties that countenance or practised persecution for opinions sake. He would assert the right of the majority, and entertained no sort of apprehensions from those spectres and hobgoblins, those denunciations of blood and such declamations as were thrown out by some gentlemen, and which betrays the rancour which rankles in some gentlemen's breasts, who judge of others by themselves, and furnish the strongest argument against trusting to them. He disdained persecution, but he would guard against it. He would follow the letter and the spirit of the constitution which excluded the choice of minorities; which was advantageous to the minority if it was not their own fault. We are called upon to make a choice or we are not. Will gentlemen tell us that we make a choice, if we admit what is contrary to our sentiments of right and wrong. What is the object of the amendment? To put it in the power of the people to choose those whom they think most entitled to confidence and respect. If we furnish an amendment which they do not approve, they will send it back to us.

MR. TAYLOR this appears to be a subject of so much importance—and the matter introduced into the debate had given it a more serious air than it at first assumed. To estimate a measure of a public kind we must look to the consequences which it is intended or may incidentally produce. If the measure had the tendencies or would produce such effects as some gentlemen surmise, it would be very serious indeed. But he would be bold to say that it was never contemplated to countenance or encourage a classification of states. No man he believed who advocated the amendment would submit to a classification of states any more than a classification of men, or the establishment of patrician and plebeian orders. Are gentlemen who hold forth these delusions conscious that the course they pursue is the only mode to excite that jealousy and distraction which they say they deprecate? Do gentlemen wish to excite an hostility of this kind, to inculcate the idea of discriminating the states into patrician and plebeian? Are they regardless of the consequences or have they ever considered them?

How he would ask is this amendment to favor the large at the expence of the small states? Gentlemen have not shewn. Have they considered that nothing is so fatal to freedom as the existence of orders and distinctions in society? Could the effect be less pernicious if you attempt with any effect to stir up rivalry of states? Are you prepared to estimate the consequences of violence and the conflict of weakness against strength? Can any gentleman reflect on it without horror! Is it to be presumed that if you set the furious passions in agitation that the large states will sit patiently and bear unmerited reproach and outrage? Do you not perceive that these menaces and clamours proceed exclusively from those who affect so much concern for the small states? Are gentlemen aware of the responsibility which they attach to themselves—that of exciting resentment and animosity, and that kind of animosity, which a weak man injured always feels towards the strong: for it is of no consequence whether the weak man is deceived, and insulted by the imposition put upon him, if he is really deceived into the pernicious belief.

He had persuaded himself a mode of argument so pernicious could not be employed on this occasion; he had expected that the question would be examined and decided upon its true grounds. But beside this we find an

attempt to defeat the amendment by its form. Let us examine this amendment. By filling up the blank with 5 you carry the election into the house of representatives, and why do we wish to keep the election out of the house of representatives? Because experience teaches us to avoid the danger of diets, which are always exposed to intrigue and corruption, as we avoid elections by mobs from their liability to be misled by the sudden impulse of passion and violence. We wish to avoid both, because each by different paths leads to the same consequence. One or two elections by a diet, would repay the small states—with what?—with *monarchy*. Elections by diets always lead to monarchy. It is for this reason then that we wish to keep the elections where they should be in the hands of the people, where from very obvious cause neither intrigue nor corruption can operate. It is by diets that Great Britain has been ruined in her prosperity and liberties. By placing the election in the house of representatives you expose the small states to the evils which Great Britain has suffered thro' her rotten boroughs. The small number of representatives in the small states will expose them to the allurements, against which humanity is not always fortified. The danger of temptation must be guarded against; else the minority may be thro' corruption made to govern—the small boroughs where there are few electors have given the rule over the majority in England for more than a century; corruption has been the prime minister, and the parliament has been in fact the mere registers of the monarchical edicts.

But it will be asked do we lessen the chance by lessening the number. Yes, sir: the greater the scope is which you give the house of representatives, your chance is the greater for a number of candidates—if you fill the blank with 20 you will have 20; if with 5 you will have 5 within the scope of that power and the greater numbers the electors may have to nominate the greater division of sentiment, and more numerous will be the inducements to corruption.

Limit the number to 3 and you reduce the danger, and by condensing public sentiment, you will then have the watchfulness of ambition on one side and of virtue on the other directed without distraction to the limited number—he would therefore prefer 3 to five.

MR. DAYTON believed it would come to this, that when the question came to be discussed and the rights

of the small states maintained, the large states would threaten us with their power. The same threats had been heard in the old congress, but they were laughed at, for the votes of the states were equal; they were heard in the convention, but they were spurned at, for the votes were equal there also; the large states must be cautious here, for in this body, for here too, the votes are equal. The gentleman had talked of a classification of states as a novelty, but he would ask if that gentleman pretended to be wiser than the constitution?—Look through that instrument from beginning to end, and you will not find an article which is not founded on the presumption of a clashing of interests. Was this fine process instituted for nothing? Was developing the election in particular circumstances in the house of representatives intended for nothing? Was nothing meant by the provision of the constitution, that no amendment should ever deprive the states of the equality of votes in this house? Yet, it was that jealous caution which foresaw the necessity of guarding against the encroachments of large states. The states, whatever was their relative magnitude, were equal under the old confederation, and the small states gave up a part of their rights as a compromise, for a better form of government and security; but they cautiously preserved their equal rights in the senate and in the choice of a chief magistrate. The same voice that now addresses you made the solemn claim, and declared there was no safety in association unless the small states were protected here. The warning was taken, and you find in that part as in all others, a classification governs every line of the constitution.

GEN. JACKSON said that though coming from a small state he had not been instructed, and was therefore at perfect liberty to act according to the best of his judgment; though his state was now, in regard to population, small, and though it were to remain so, he could have but one opinion on this subject. He saw abundance of reason for preferring three to five. The constitution under the present form has directed the choice to be made from five. But the reason of this was consistent with the result to be produced; the electors were to vote for two persons indiscriminately, but with the restriction of voting for one only belonging to the state where the vote was given. The voting for two would

necessarily bring forward four candidates, and a fifth possibly, for we saw in the two elections before the last that there was one more than the four, though in each case the fifth had but one vote; he alluded to the vote for Mr. Jay. In the amendment proposed you are called upon to designate for each office, and there can be little apprehension of having more than two or three principal candidates; and for twenty years to come he had no apprehension of a greater number of candidates if this amendment prevails.

Now supposing that as on the first and second elections, there were to be five candidates, and that there should be a candidate with one vote like Mr. Jay, and that the number were five; that there was an equal number of votes for two candidates as at the last election, two others with inferior numbers, and the fifth only with one vote, the election would devolve upon the house of representatives, and thus would have them place him who had only one vote on the same footing with him who had seventy three.

Suppose the result to be the same as the last election when the votes were for Thomas Jefferson 73, Aaron Burr 73, John Adams 65, C. C. Pinckney 64, J. Jay 1—here the unequal numbers would be placed under the power of the house upon equal terms.

What would you do, sir, if, there was not barely five who had not the highest numbers—your difficulties would encrease with your numbers. He had no apprehensions on the score of the present election, every member of that house must be satisfied that there can be no doubt of his being the man of the people above all competition—he believed too he was the man of the legislature; all considerations as to the next election could have no influence here; we must look to the future when we may not be so fortunate. He was sorry to hear gentlemen talk of separate interests, he knew of no separate interests, but felt himself bound to maintain the interests of the great whole. This he thought could not be done but by the choice from the number three.— You had best avoid the danger which experience has shewn you narrowly escaped. You must keep the election out of the house of representatives if you wish to keep the government from civil war, from the danger of having a man not voted for by the people proposed to be placed over your head, as you are plainly told had been

proposed. We are but the servants of the people and is our duty to study their wishes. Separate interests do not exist—and the agitation of such ideas should not be countenanced. It is all a cant, a mere factious pretence—he had never known any separate or hostile interests in this country but that of whig and tory ; tho' he had heard much less said about these real enemies than the imaginary adverse interests so much talked of as the eastern and southern states—then the eastern and the western—then come the federalists and anti-federalists—subsequently federalism and republicanism—and now it is the large and small states. Presently he should not be surprised to hear of the hostility of the rats and anti-trats ; the danger from one is as real as from the other—He hoped to see all this delusion banished ; he was well satisfied it would not make any impression on the people. By fixing on the number 3, division and passion will be more effectually prevented, and intrigue will have less room for operation.

MR. WRIGHT—we need not be told in this house, that the constitution was the result of a compromise, or that care was taken to guard the rights of each state ; these things we must be very ignorant indeed not to know. But does it therefore follow that it is not susceptible of amendment or correction under experience ? Does it follow because for mutual interest and security this compromise was made, that we are precluded from effecting any greater good ? No man would accuse him of a wish to see the interest of any state impaired.—But we can preserve the spirit and intention of the constitution in full vigour without impairing any interests. And this is to be done by the discriminating principle, it fulfils the intention and it forefends the recurrence of that danger from which you have once escaped. By this principle each elector may name his man for each office, and this can be done whether the number be 3 or 5. For the latter number he was disposed because already adopted by the other house, and he did not wish to delay its progress. If he were to form a constitution, he would provide that there should be only two candidates presented to the house. But he did not rely on any number so much as on the discriminating principle.

MR. NICHOLAS—several gentlemen profess much reluctance to make any change in the constitution, he would

make no such profession ; and though he should be as jealous of improper alterations or the introduction of principles incompatible with republican government, he would not hesitate to make any alteration calculated to promote to secure the public liberty upon a firmer basis, nay if it could be made better he would expunge the whole book. Gentlemen who are for adhering so closely to the constitution appear not to consider that a choice of president from the number 3 is more in the spirit of the constitution than from 5 ; and preserves the relation that the election of two persons under the present form holds to the number 5—a reason equally forcible with him was, that by taking the number 3 instead of 5, you place the choice with more certainty in the people at large, and render the choice more consonant to their wishes.— With him also it was a most powerful reason for preferring 3 that it would render the chief magistrate dependent only on the people at large, and independent of any party or any state interest. The people hold the sovereign power, and it was intended by the constitution that they should have the election of the chief magistrate. It was never contemplated as a case like to occur but in an extreme case, that the election should go to the house of representatives. What he asked would have been the effect had Mr. Jay been elected when he had only one vote ? What he would ask would be the impression made upon our own people, and upon foreign nations, had Mr. Aaron Burr been chosen at the last election, when the universal sentiment was to place the present chief magistrate in that station. He did not mean any thing disrespectful or invidious towards the vice president, be barely stated the fact so well known, and asked what would be the effect—where would be the bond of attachment to that constitution which could admit of an investiture in a case so important, in known opposition to the wishes of the people ? The effect would be fatal to the constitution itself ; it would weaken public attachment to it, and the affectation if alone for the small states would not have been heard of in the deep murmur of discontent. Gentlemen, who pretended to feel, for he would not enter into their conceptions if they had any real apprehensions on the subject of the danger of the smaller states, forget that this is not a project of the large states ; they ought to have considered that it has originated with the small states ; and that in the house of representatives two thirds

of the representation is that of smaller states. Have gentlemen forgotten that the amendment has been twice recommended from South Carolina, afterwards by Vermont, then by N. Hampshire, and finally by Tennessee? Are these large or small states?—Away with such groundless pretences!—The attempt to excite jealousy in the small states cannot succeed. The people know that it is calculated to prevent a crisis which was long apprehended and which the experience of the last election proved to be well founded.

MR. S. MACLAY said he believed that as it concerned one more than another state, it was perfectly immaterial whether the number 5 or 3 were chosen. He conceived that it involved no question but what was common to all the states—and he wished this clannish spirit could be laid aside on occasions of this important nature, and that the general interest of the whole should be considered. In this point of view the present amendment cannot affect the political rights of any state for being on a perfect equality, in the choice of one from three as well as one from five, no danger of rights can exist, tho' other dangers may be apprehended. If any rights can be at all affected, they must be civil rights. But here he found it difficult to convey with the clearness he could wish his ideas on the application of the amendment to civil rights; he would therefore endeavor to do that by comparison which was not so easily explained by itself. He would compare the states of the union in their collective capacity to individuals in society; wealth in society is power, and he who has wealth possesses a more extensive influence than he who is poor; in this respect, perhaps it may be said they are not upon a perfect equality, because one man possesses an equal direct power, with the poor man, and an overplus of indirect power, which the poor man does not possess. But the same men in their civil capacity, as citizens, are upon complete terms of equality, possessing equal rights and power as in the right of suffrage, and in the sight of the law they are equal units in the mass of society.

Extent of territory occupied by a numerous population, is in a state what wealth is to the private individual. The state of small extent or of comparatively small population, stands in the same relation to society as the poor man. Notwithstanding this disparity of political or physical power, the rich and the poor man, the large

and the small state, are equally interested in supporting their actual or personal rights. But they may be considered as equally interested in supporting those personal rights which connect themselves with the security of their wealth, in which they have but unequal interest.— The wealthy have beside their civil rights their property at stake, and may therefore be supposed more vigilant and watchful of innovations which might weaken or destroy that security by which they hold their rights and privileges. If this reasoning be correct, let us apply it to the case under consideration; why attempt to alarm and raise jealousies in the small states, when it is evident that the interest of the larger states will be constant protection to the smaller states? The idea might be carried farther, and it might be shewn, that if there is any thing in this amendment that has any tendency to alter the relative power and influence of any states in the union, the danger would be to every state in proportion to its extent and population.

It was probable that on this subject he entertained opinions different from gentlemen whose talents and information he highly respected, on such occasions he always offered his sentiments with diffidence; but he was willing to hear and be convinced if mistaken; but from every view he had taken of the amendment it did not appear to him, that it could alter the principle in the constitution, nor change in any way the relative rights and situation of the states; in simple truth it is only alteration in the detail of the elective process, calculated to assimilate the election of president and vice president of the United States to the modes already in practice in the election of the executive of several of the states. He could not see that it would be attended with any danger to any of the states, if there was danger the danger would be greater to the larger states, as their interest is the greatest. But danger of this kind cannot and does not exist; for it cannot be shewn that this amendment has or can produce any effect on the law making power in this country, and it is in this power that we are to seek for the nature and the protection of all our rights, civil and political; and with this impression he would vote for the amendment with the number three.

An adjournment was called for and carried.

NOVEMBER 25, 1803.

The amendments adopted in this day's debate were as follows:

On motion,

It was agreed to amend the amendment, adopted yesterday, and strike out the words "*in the manner directed by the constitution,*" and insert—"But in choosing the president the votes shall be taken by states, the representation from each state having one vote, a quorum for this purpose, shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice."

On motion,

It was agreed to amend the amendment adopted yesterday, and to strike out the words, "*and in case of an equal number of votes for two or more persons for Vice President, they being the highest on the list, the senate shall choose the Vice President from those having such equal number, in the manner directed by the constitution;*" and insert, "If such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president: a quorum for the purpose, shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice."

On motion, by one of the majority—

It was agreed to consider the vote of yesterday for inserting the word *three* in line 10th of the amendment agreed to, so that it stand blank—and after debate the senate adjourned.

NOVEMBER 28.

The consideration on the amendment being postponed on Friday 25th—was taken up this day for a short time, when the following desultory conversation took place.

MR. ADAMS suggested the propriety of postponing the question this day, as a member was absent indisposed (Mr. Anderson) who was the representative of a small state. He was ready on Saturday to give his vote on the main question, and on the incidental question; but as he understood the number three to be a *sine qua non* with the gentleman from Virginia, he thought it better the subject should be postponed until the house should be full.

MR. COCKE said that number was not with him a *sine qua non*; he would vote for the amendment with either number; tho' from a more deliberate consideration

of the arguments he had heard he was disposed to think three the best number as it promised to bring the election closer to the people. He was not apprized how his colleague meant to vote.

MR. FRANKLIN was against a postponement; his mind was perfectly made up on the subject, and it was time the senate should come to a decision; the legislature of his state was in session, their sentiments were decidedly in favor of the amendment, and he wished it to reach them before Christmas, as they would most likely rise about that time.

MR. WHITE said he as well as other gentlemen was, ready to vote on the main and incidental questions, and was fully aware of the importance of an early decision; his mind was made up as a member from a small state for the number 5, and he understood the member absent was in favor of the same number; he wished on his account therefore to postpone though ready himself. The gentleman might be able to attend to-morrow.

MR. NICHOLAS thought there was no necessity whatever to delay a decision; if the indisposition of a member was a good reason for delay, business might be postponed forever; but even if the gentleman absent was solicitous to deliver his sentiments, the filling up the blank with any number need not prevent it; as the number might be withdrawn to afford him that opportunity, and the discussion of the main question might still proceed.

MR. DAYTON was opposed to that mode of proceeding, upon the issue of the number 5 or 3, it was probable that the whole question would depend.

MR. TRACY was for a postponement, he felt himself unwell—a pain in his side.

MR. COCKE was indifferent whether decided now or to-morrow, it would be all the same—postponed.

TUESDAY, Nov. 29.

The order of the day being called up, on the amendments to the constitution—a considerable time elapsed, when

MR. DAYTON rose and said, that since no other gentleman thought proper to address the chair, altho' laboring himself under a very severe cold, which rendered speaking painful, he could not suffer the question to pass without an effort to arrest it in its progress; and should consider his last breath well expended in endeavoring to prevent

the degradation which the state he represented would suffer if the amendment were to prevail.

As to the question immediately before the senate for filling the blank with *five*, he felt himself indebted to the member from Tennessee for renewing the subject—he was grateful also to the member from Maryland (Mr. Wright) for declaring he would support it, as well as for giving the assurance that he was disposed to consider and spare the interests of the small states as far as possible, consistently with the great object of discrimination.

Every member who had spoken on this subject, seemed to have admitted, by the very course and pointing of their arguments, even though they may have denied it in words, this was really a question between great and small states, and disguise it as they would the question would be so considered out of doors. *The privilege given* by the constitution, extended to *five*, out of which the choice of president should be made, and why should the smaller for whose benefit and security that number was given, now wantonly throw it away without an equivalent. As to the vice president, his election had no influence upon the number, because the choice of president in the house of representatives, was as free and unqualified as if that subordinate office did not exist.— Nay, he said he would venture to assert that even if the number five were continued, and the vice president entirely abolished, there would not be as great a latitude of choice as under the present mode, because those five out of whom the choice must eventually be made, were much more likley hereafter to be nominated by the great states, inasmuch as their electors would no longer be compelled to vote for a man of a different state. The honorable gentleman from Maryland (gen. Smith) had said, he was not surprised that those who had seats in the old congress should perplex themselves with the distinctions; but he could tell that gentleman, that it was not in the old congress he had learnt them, for there he had seen all the votes of the states equal, and had known the comparatively little state of Maryland controlling the will of the *Ancient Dominion*—It was in the federal convention that distinction was made and acknowledged, and defied that member to do, what had been before requested of the honorable gentleman from Virginia, viz. to open the constitution, and point out a single article if he could, that had not evidently been framed upon a presumption

of diversity (he had almost said, adversity) of interest between the great and small states.

The gentleman from Georgia too (Gen. Jackson) is very much afflicted that the state distinctions had been introduced on the occasion, and admonished the senate to put away all local considerations. That gentleman, may now be prepared to do so, since he had obtained all his heart could wish for his immediate constituents ; but if there was a single member, who had more ably, more perseveringly, and more successfully and warmly contended for the rights and interests of his particular state, than any or all the other members on that floor, he was that member. The gentleman had not only been quick, but trembliingly alive, to every measure that could in the most distant degree affect the interests of his state. It would be remembered that in the session before last, when a bill came up from the other house for allowing the privilege of franking a few letters to a gentleman who sat there as delegate, and had travelled about 1300 miles from the banks of the Mississippi to inform us that it was inhabited by other creatures than alligators, the bill was opposed by that very gentleman upon the ground that the dignity of Georgia would be wounded, and her rights injured by the passage of that bill. It was afterwards committed and recommitted, whilst the unhappy delegate (since put in his grave, poor man no doubt of a broken heart) was compelled to wait several weeks without writing under privilege and without drawing a shilling of money, until the gentleman from Georgia could find leisure to secure the rights and dignity of his state from being injured by allowing the delegate to frank his billets.

In a more recent and far more important transaction, it might be recollected also how dexterously, how zealously, and how very successfully he had advocated the interests of a *little corner of the union* known by the name of Georgia—On the list of expenditures there would hereafter be seen between one and two millions accounted for being paid over to the treasury of the state he represents as the fair fruits of his zeal and address.—He may now be ready since he has obtained thus the extent of his wishes, to banish all local attachments pending this question ; he would give him credit for his assertion, and for two reasons, *first*, because the gentleman himself had said so ; and *next* because he should

on any other principle be at a loss to account for the vote he was about to give.

Since these instances of state attachment, and of the good fruits of it, were so fresh in the recollection of the senate, it was to be hoped the gentleman from Georgia would allow members from other states sometimes to imitate his commendable example, by taking a little care of the interests of their constituents; not in the more trivial question of franking letters or of a few dirty acres, but in a question so very serious in its nature as to strike at their sovereignty itself.

Some attention was due to the remarks of the gentleman from Pennsylvania (Mr. Maclay) he went into an ingenious but subtle, distinction between civil and political rights, artfully calculated to divert the attention of the senate from the true distinction upon which this motion and the main question turned, by amusing them with an ingenious disquisition of the rights of men in society, distinguishing them under the heads of political and civil, but without following him thro' his regular chain of reasoning he would make shorter work, and reduce all that gentleman had said to the test of analysis. To those representatives of small states who should vote with him, his disquisition was intended doubtless as a sort of justification; and to those of them who although voting against him must be compelled to submit, it was kindly meant as a consolation under the new dispensation of state influence—They were told that their rights were of two kinds, viz. *political*, in relation to their standing as members of a state, and civil in reference to their rights as mere individuals—that their political rights might be abolished or abridged, or their state sovereignties invaded and prostrated, but their civil rights might remain unimpaired—that they might, to be sure, be less respected as Jerseymen, Rhode Islanders, or Georgians, but they would not therefore be less respected and regarded as members of the union, or Americans. Mr. Dayton said he liked the gentleman's illustration of his argument, much better than the argument itself, and he had approved the machinery he had employed, much more than the use he had made of it; with his leave therefore he would take the materials he had furnished for the occasion, and put them into plain and simple allegory.

The gentleman from Pennsylvania had compared the great and small states confederated, to rich and poor

men associated in one community. Let the comparison for argument's sake, be admitted to be just and let the analogy be pursued. Suppose these rich men, *four* in number ; and the poor men, *thirteen*, had entered into a compact which required that a chief should be chosen from among them, once in four years, and that, as their votes were to be in proportion to their wealth, the *four* men would have a preponderance over the other *thirteen*. Suppose them allowed to vote for themselves exclusively, but with this stipulation, that if on the first ballot, a majority should be found for one, it should devolve upon the whole seventeen to decide upon the chief, with equal voices. Would it not in this case, be the interest of the four to limit this choice to the *three* highest on the list, and of the thirteen to extend it to *five*? In the first case of *three*, they would be compelled to elect one of the 3 rich, however unworthy ; and in the other case, they would be at liberty to choose one of their own number, if they thought him better qualified than any of the other four—They might it was true risk the displeasure of the four rich men, but why debar themselves from doing it, if the case should justify their running the risk. This could with propriety be said to be such a case, or (to drop all figure) a question between the great and small states. The constitution allowed a choice from the five highest on the list, and why should we debar ourselves of the right of such a choice ; it was a privilege which ought to be persisted in even though the resentment of the great states might be aroused, as expressed in the animated language of the honourable gentleman from Virginia ; their power was great, and he could hear the menace of a former day reverberating through the senate chamber ; its effects would perhaps be best ascertained by the vote which was to follow.

MR. WRIGHT rose only to correct an error into which the gentleman from Jersey had fallen, concerning the number 5, which he had spoken in favor of on a former day ; he had never admitted nor argued that the number *five* or *three* would affect the constitution or the small states ; he had on the contrary declared that all he wanted was the discriminating principle ; and so that was effected, he cared not whether the choice was to be made from 5 or from 20. As he had not used such arguments, he supposed he must have been imposed upon

by the misrepresentations of his sentiments in an infamous paper called the Washington Federalist, in which nothing said on his side of the house was reported truly; that paper had falsified his speech, and he took that opportunity to state that whoever was the reporter of his speech in that paper, was guilty of a lie.

MR. DAYTON observed that the allusion he had made was to the support which the gentleman certainly gave to the number 5; as to what the paper alluded to might say he had nothing to answer.

MR. WRIGHT—he repeatedly advocated the discriminating principle, and he had been represented as holding opinions which he did not hold, that the amendment was an attack on the small states; now as he had never entertained that opinion, and as that infamous paper had so misrepresented him, he must repeat, that whoever wrote that charge in that paper wrote a lie.

MR. DAYTON hoped the gentleman did not mean to connect him in his observations; he could not certainly suspect him as the author of any piece in that paper.

MR. COCKE had also come in for a share of the gentleman's thanks, but there were none due, as he had acted as one of the majority, and was willing by giving them an opportunity to say all they had to say in favor of the number 5. With him at first it was a matter of indifference, so he obtained the discriminating principle. His constituents were unanimous in favour of this principle, and he had their instructions to that effect. He preferred the number three for the reasons he had already given, it brought the election closer to the people, 5 would give a greater latitude and subject it to the legislature, which he did not wish to see take place. As to those dreadful consequences and all this depredation of states—he could not see how those things could happen. What if the large states were foolish enough to attempt the enslavement of the smaller states, were the small states so feeble and so few as not to be able to prevent them. As to this degradation of small states he could recollect the time when it was said, that if Pennsylvania would give an unanimous vote, Jersey would give a vote to counteract it. He knew nothing that would degrade a state so much as intrigues of such a nature—and it was to avoid that degradation, he wished for the amendment. He wished the president not to be an intriguer—he wished to have him what he now is the man of the people, and for that purpose he would vote for 3.

GEN. JACKSON had intended to have given only a naked vote on this question, but the profusion of compliments heaped upon him for merely discharging his duty, demanded some return ; he had been sent to that body to watch the interests of his state and to do to the best of his judgment justice between it and the United States. He had conceived the rights of Georgia invaded, and he felt it to be his duty to seek justice according to the constitution. Whatever gentlemen may insinuate about dirty acres, no state of the union was so much oppressed as Georgia had been ; not by the large states from which the gentleman apprehends so much, but by the small. Let any gentlemen consult the convention of N. York, and they will find that not a single small state came forward to support her protest against a great wrong, when a treaty was sanctioned that violated her rights and parcelled out her territory. As well might the union pretend to give up Philadelphia to Great Britain, as the county of Talassee to a parcel of tomahawking Indians ; had that gentleman been a representative no doubt he would have come down upon them in thunder, he would have with a loud voice rent the hall of congress with the wrongs of the state, and the ravage and carnage of which it was exposed—he would have described the children torn from their mothers arms by the ufeeling savage and dashed to pieces—the matron abused and murdered ; and deplored that to the authors of such cruelties, the territory had been consigned.

Gentlemen either know not or cared not for these wrongs ; and after several years supplication, it was only two years ago that half justice was done ; for half what was taken away by usurpation has not been restored by justice. We had paid other states for defending the union, but Georgia had not yet been paid and it remains yet to be known whether the widow bereaved of her husband in battle or murdered by treachery while defending his country, or the orphan who survived her murdered parents, are to be remunerated even for their country and equitable demands. Government by a law seized upon this territory and legislated for it. It was for that territory a delegate was sent, to whom the gentleman adverted. He opposed the extension of the privilege of franking to any delegate, because agreeing to it would be to acknowledge the title of injustice.

No state had ever been oppressed by Georgia—year after year they had sent petitions demanding payment

for the service of the militia which had protected the frontiers, but they have not been paid to this hour.

Upon the merits of the question of numbers he had wished to remain silent, but as he was up he would intrude upon the house a few observations. He preferred the number 3, for several serious reasons ; he wished to prevent the choice from devolving upon the house of representatives ; he wished it to be out of their power if it should devolve upon them to elect any man not evidently intended by the people, the smaller number would render this more certain ; he did not consider it a matter of any consequence from what state a president was chosen ; he believed the small states had never offered a candidate ; the period was too short since the existence of the government to admit of many states having an opportunity to bring forward a candidate ; and various good causes had contributed to make the selections that had been from large states. While parties existed there would be a champion chosen by each, if Jersey has not brought forward one, it cannot be for want of inclination ; and where Princeton college exists it would be ungracious to suppose that the requisite talents could not be found there. Georgia had never wished to bring forward a candidate, neither had Tennessee, nor several other states. He believed that wherever a man should be found in the union distinguished by his virtues, his genius, and his devotion to republican principles, that he would be taken up without concern for the state in which he has his residence.

This league of the large states so much harped upon, he could not comprehend—where was it to be formed and how ? are we certain that Massachusetts and Virginia, Pennsylvania and New York will, notwithstanding their distance, several interests, and views, combine to tie the small states hands and feet ? No, sir, we find the large states disagreeing and as jealous of each other as the small ; and with more reason if the argument has any weight at all.

He preferred the number three in the amendment as it brought the election two degrees nearer to the people ; because a constitution was not intended for the convenience of the servants, but for the use of the sovereign—the people. Out of 5 persons the provision for a choice was before directed to be made ; the constitution as now proposed to be altered would approach to the principle and number of 5 in a safer and more certain way, for the president would be chosen out of the three highest and,

the vice president out of two others. It was not proper that any man should have a chance of being placed in a situation of so much consequence contrary to the intentions of the people. It is therefore our duty to prevent such an occurrence ; and we ought to send our amendment to the people free from defects as possible, because their rights are involved therein ; neglect their rights and they will form a constitution for themselves ; or in seeking to reform it they will incur the dangers either of a sanguinary revolution or of the establishment of a government like that of Great Britain, sustained by corruption and the wretchedness of the people.

MR. TAYLOR would trespass on the house with a few observations. With some other gentlemen he was not so much disposed to dispute about the number 5 or 3, as strenuous to obtain the principle of designation. The arguments of those who opposed the amendment he perceived had been all along founded on extreme cases, which even if they were to happen would not produce the affirmed effects on the small states. The number three he certainly preferred, because it gave a greater certainty to popular choice ; the extreme case of this would be an election by the house of representatives ; if the number were 3 how would this operate in the house ? Would not the small states have a greater share of influence than the large states, in the proportion of 13 to 4 ? Another case is that election should remain in the divisible electoral bodies, as heretofore, or in the extreme be elected by an accumulated body in the house of representatives. Would this latter be in favor of the small states ? Would the election by a diet be preferable or safer than the choice by electors in various places so remote as to be out of the scope of each others influence, and so numerous as not to be accessible by corruption.— It is true that the number 3 has a greater tendency to give the choice to the people, it cannot be true that the small states would wish to place it in the house of representatives, because 3 would give the people the choice, and even if they did wish to take the choice out of the hands of the people, it ought to be opposed because it is contrary to the spirit and intent of the constitution.

The division of election is one of the soundest principles of the constitution ; elections are more free and less liable to passion and corruption in the state of division ; for experience has shewn that elections any more

than executive powers cannot be so well effected by accumulative bodies. Your constitution directs elections in states, not assembled at one place ; and why ? To prevent the evils to which diets or legislative bodies are exposed. Does not three then adhere infinitely more to the leading principle of your constitution, by placing it in the power of the numerous election districts, and keeping out of the reach of the numerous or accumulated body the choice ? Is it not necessary to guard by every means against what has proved fatal to so many republics ?

Let the extreme cases on the other hand be taken.— The number 5 is adopted. For what end ? To carry the election to the house of representatives, will the small states be benefitted by 5 more than 3 ? Will they not from the number, be more likely to be divided, and would not a number of the large states then possess all the advantages of number and union—for the gentlemen consider this union of the large states as certain, and they cannot refuse their own arguments or the consequences of them.

Suppose the elective power of the people annihilated, and transferred solely to the legislature. Would the small states consent to this ? Would they be so blind ? Yet by adopting 5 you promote this evil—by 3 you prevent it, And yet gentlemen say they look upon this as only a contest of small and large states.

The gentleman from Jersey had talked something of a threat alleged to have been thrown out in that house by him in a former day's debate. He would beg leave to say, that the gentleman had most egregiously misrepresented or misconstrued him. But he could see in it a very shallow stratagem ; he thought the gentleman possessed more skill ; had his generalship been as great as his reputation he would not have planted his ambuscade where the enemy must see him from all sides—and expose all his force by this state of his advance party. When he heard this clamour about the danger of small states, he was led to ask what was their number ? And looking round that house he found that there were thirteen represented—and only four large states ! Are the representatives of the small states in this senate then so blind to their danger—that possessed of a full majority of nine states, they will deny themselves the power of self government ! It is a principle of heroism or something else which enables minorities to govern

—but it is a principle of reason and virtue which gives the government to majorities in a free government.—Are we then in making the designating principle, to adhere to the form and desert the substance ? How does the constitution now stand ? We chuse from 5 the president and vice president. How if we adopt 3.—Then the president would be chosen from 3 and the vice president from two making five. Here preserving the substance and indirectly the form. How if we adopt the designating principle and leave the number five. Then we should chuse the president from the *five* and the vice president from two other—making 7 ! The more the subject is examined the more we must be convinced that 3 should have the preference.

Before he sat down he would say a word more on the subject of the threat alledged to have come from the *ancient* dominion. If he mistook not there were intimations held out in the course of the debate, that bloodshed would be the result of the amendment of the constitution ; and many other expressions of that nature had been employed, which by no means argued decorum, and could not serve as argument with any member of that house. The malignant passion of jealousy was conjured up, to be the herald of this civil discord, and the most disastrous afflictions were predicted as the consequence. In glancing at these unwarranted and unwarrantable sentiments, he had assumed it as a principle not to be overthrown, that free governments must exist upon moral rectitude, or perish ; and that if the United States were capable of being actuated to rage by their pernicious and destructive passions, rectitude and morality would no longer exist among them, and they must be destroyed by each other. What, sir, because there are strong and powerful states, must the weak be tolerated to menace them with injury and bloodshed, without the liberty of warring against the fatal consequences ? Are strong men bound to bear the wrongs done them by the weak ! Are the rich to fold their arms and bear to be robbed by the poor with silence and without remonstrance ? Yet such is the inference that must be made from what the gentleman has undertaken to call a threat. Wherefore threaten with good ? Can evil be the result of good, or good of evil ? Natural and moral consequences flow from moral actions ; and when there are any, who undertake to do evil, it

is but strict justice he should suffer. He found some difficulty in bringing himself to notice, this charge of a threat ;—because he had perceived particularly in the paper published in this city a common practice of misrepresentation. In a former days debate he had alluded to the fatal effects which the British government had produced on the liberty and prosperity of that country, by the means of the rotten boroughs ; and he had been misrepresented as depreciating the small states and describing them as the rotten boroughs of America. It must be obvious that a purposed intention to misrepresent could alone have given sentiments of the kind as uttered by him. He had not alluded to the states in their capacity as states ; he had objected to elections by diets, and the small states having but few representatives, he stated as more exposed to corrupt attempts upon them, than states where the number was larger. In an election by the house of representatives this would be the case—some states have but one, others two representatives, attempts would be made upon them, and though we have had virtue enough to resist temptation, our country must be like all others subject to the casual decay of virtue, and at a future day the representatives of small states may become as venal as those of the rotten boroughs of England ; and no longer represent the feelings, the interests, or the freedom of their country.

MR. ADAMS in a former debate had stated that he had not a wish to avoid or seek for the yeas and nays on any question, on the present occasion, however, he would when the question was taken call for the yeas and nays. But his own vote on the final question would be governed by the decision of the number 5, and he wished to have some record of his vote, that he might be hereafter able to defend himself against any charge of inconsistency. On the principle of the amendment he had formed his opinion, and he was free to confess, that notwithstanding the many able productions which he had seen against it, he thought it calculated to produce more good than evil. He was not however influenced in this opinion by the instructions which had been read in a preceding debate from a former legislature of Massachusetts to their senators ; he presumed these were not read by way of intimidation ; to the instructions of those to whom he owed his seat in that house he would pay every respect that was due,

but he did not think that the resolutions of a legislature passed in March 1799 or 1800 ought to have the same weight; since that time four total and complete changes had taken place, and probably not one third of those who gave those instructions now remained; he held a seat in the legislature himself three years since, but did not perceive any particular anxiety on the subject, and he did not think that the present legislature would be extremely offended if he were to give a direct vote against what was recommended four years ago. But as it seemed to be read to influence him he would state his reasons for his vote.

Upon the alteration of the number from that agreed upon by the house of representatives, several arguments had been offered; they were of three descriptions.

1. That no alteration of the constitution ought to take place unless it should be indispensably necessary, and that in altering the constitution no departure should be made from its spirit.
2. That it ought not to be carried in the house of representatives.
3. That the alteration proposed would effect the small states.

To the first he would say that although the amendment might be useful, yet it was not indispensably necessary.

The gentleman from South Carolina (Mr. Butler) had argued on the necessity of adhering to the principles of the constitution on a former day with great force; and tho' his arguments were used upon an amendment of another kind proposed by himself, they applied in this case as closely as possible; the same arguments had been used by other gentlemen, on a suggestion of the gentleman from Jersey. (Mr. Dayton) concerning the abolition of the office of vice president; it is true that some gentlemen declared that they had no objection to the abolition but disapproved of the time it was brought forward, he agreed and voted with the gentleman on that occasion.

But the ground is now changed and we are told that the principle of designation is not so much the choice as to keep the election out of the house of representatives and in a variety of ingenious arguments we are referred back to antiquity to justify the injurious effect resulting from elections by diets. As a speculation upon the principles of government he admired the gentleman's

information and eloquence, but he was not prepared to act upon the principle. We had been shewn the great inconveniences of carrying the elections into the house of representatives ; make it a separate question, and let it be fairly and fully discussed and he would then prepare his mind to vote. But before he could act on it now, he would just observe, that if you do not pursue that course you pursue some other and it would be necessary to provide a substitute before we abandon that we possess. This consideration he therefore thought had no concern with the subject before us.

On the third point, that it would essentially affect the rights of the small states, he thought it the true object of discussion ; and he saw it wholly as a federative question, and rejects all arguments of the popular kind.— From the mode in which it had been argued the question would seem to be a dispute between 16 small, and one large state. The constitution however was a combination of federative and popular principles. When you argue upon, or wish to change any of its federative principles, you must use analogies as arguments ; popular arguments will not apply to federative principles. The house of representatives was founded on popular principles ; in this house the representation is federative, and not popular, it is in its nature aristocratic. The foundation of all popular representation is equality of votes ; but even the ratio of representation is different in different states ; the numbers in Massachusetts and Virginia, in Vermont and Delaware are different in their proportions ; but still an equality of representation is preserved, and the only difference is in the details.— But if you argue upon the principles of the Senate, this equality of popular representation, or by an equal or relatively equal numbers will not apply, you must discuss it upon another species of equality, the equality of sovereignties, and the independence of several states federatively connected. Applying principles then to the election of President if you reduce the number from which the house of representatives is authorised to choose, do you not attack the principles of the federal compact, rather than the rights of the small states.— The executive it had been said, is the man of the people, true and he is also as was said though upon different grounds, the man of the legislature—it was here a combined principle federative and popular. Virginia had in that house 22 popular re-

representatives, in this she has 2 federative; Delaware has 1 popular and 2 federative representatives. And even in the operation of election in the popular branch of congress, the federative principle is pursued, and the state which has only one popular representative has an equal voice in that instance with the state that has 22 popular representatives. It was therefore evident that the attempt to alter the number from 5 to three, is an attack upon the federative principle and not upon the small states.

In answer to the gentleman from Jersey (Mr. Dayton) the gentleman from Maryland (Gen. Smith) had said he was not surprised to hear him who was a member of the old confederation talk of the jealousy of states, and expressed much exultation that those state jealousies had been long laid asleep, that he had been ten years in the government and had heard nothing of them, hoped never to hear of them again. He was equally happy that they had been so long laid asleep, but why was it that they had not complained? For very different reasons from those which had been inferred. It was because the excellent provisions of the constitution had guarded against all cause of complaint. The states had no reason to murmur; and they had not been stirred up; but is it to be therefore inferred, that if you now give them cause, that they will be equally silent, and that it may not tend to civil discord. He knew of nothing more likely to stir them up, than an attempt to reform your federative institutions upon popular principles.

The gentleman from Virginia as he understood him the other day, had intimated that the smaller state sought to be cautious how they excited the indignation of the large states, on this account he had complained that the gentleman from Jersey had misrepresented him; from the illustration of his sentiments now given he was persuaded that no threat was intended on that occasion, but as impression was made, it surely was incumbent on those who felt it, to notice it. Was it unnatural for a gentleman coming from a comparatively small state to feel indignant under such a circumstance? The gentleman from Virginia (Mr. Taylor) is so ingenious that like all ingenious men, his sentiments are not at once accessible by plain minds, and to this cause misapprehension ought to be attributed.

Another gentleman from Virginia (Mr. Nicholas) had said that the amendment had originated with the small

states, that the small states having a majority in this house and a majority of the legislatures, may defeat it if they choose; and these are with him decisive as to safety. But the gentleman has not taken into view that this question of number has never been before the states, and that having had no opportunity to examine it, the arguments do not apply. It is by this principle his own vote should be regulated; if 3 were adopted he should vote against the amendment.

But the gentleman Mr. Taylor had taken another novel ground; that the smaller number was the most favorable to the small states. This, however, he supported by a mode of argument to which he had himself objected. He had argued that if it was proposed to vest the election of president in the house of representatives exclusively, it would not be agreed to by the small states, because it was contrary to their interests. But this was an extreme case, and the gentleman well knew that so far from its being consistent with sound logic to argue from extreme cases, they are not admitted into argument at all.

GEN. S. SMITH, when he made the motion for filling up the blank with 3, did it after the most deliberate consideration of the theory and the principles of the constitution; which if he understood it right intended that the election of the executive should be in the people, or as nearly as was practicable, consistent with public order and security to the right of suffrage. The provision admitting the choice by the house of representatives, was itself intended only for an extreme case, where great inconvenience might result from sending a defective election back to the people, as is customary in Massachusetts where if the majority is deficient, a new election is required. Our object in the amendment is or should be to make the election more certain by the people. This was to be done most effectually by leaving it to them to designate the persons whom they preferred for each office — As under the present form there was an extreme case, so there might be when the change of number should take place; for altho' even with the number three there was a possibility of the choice devolving on the house of representatives, yet the adoption of the designating principle and the number 3, would render the case less probable. It never was the intention of the powers of

the constitution that the election should go to the house of representatives, but in the extreme case; nor was it ever contemplated that about one fifth of the people should choose a president for the rest, which certainly would be the case, if what some gentlemen contend for were to take place. When gentlemen contend for such a power, as would transfer the choice from the people—and place it in the hands of a minority so small; how happens it that gentlemen will not bear to hear of the efforts which such arguments or such measures would produce on the large states. It was not the interest of the small states to combine against the large. Suppose it were possible that the four large states should combine, and a combination of the small states alone could produce such an effect: Nine states in the union have but 32 votes out of 142—yet 9 states with one vote each make a majority of 17; tho' in relation to population they contain only about one fifth of the whole, and by such a proceeding the one fifth might chuse president and vice president in defiance of the other four fifths. What would be the consequence of such an election? At a subsequent election the large states would combine, and by the use of their votes they would frustrate every object which the small states might use their efforts to accomplish.

Notwithstanding what had been said concerning the jealousy of states, he could see nothing in it but the leaven of the old congress, thrown in to work up feelings that had been long still. It was the forlorn hope, the last stratagem of party; and he was the more disposed to think so, when he saw gentlemen from the large states coming forward as the champions of the small—this might to be sure, be magnanimity; but if his discernment did not deceive him, it was a stratagem to divide the friends of the amendment. Why was not the same jealousy entertained of the power of 13 out of 17, combining and giving absolute law to the other four? Why have gentlemen paid no regard to the experience which they have had from the last election, when less than one third of the members harrassed the public mind, kept the union in agitation, and congress engrossed to the exclusion of nearly all other business for two weeks. Suppose that the house had been as accessible to corruption, as the diets of other nations have been, and that *three men*, having in their power the votes of

three states, had been seized upon, and the election made contrary to the wishes of the people. What would be the effect—on the minds of the people—on the administration of the government—and on the attachment which the people feel for the constitution itself ? He need not attempt to describe the effects. But it is our duty to prevent the return of such dangers, by keeping the election out of that house. And the most effectual mode is to fix the selection from the number 3.

The gentleman from Jersey had affected to consider a comparison of the effects of combinations of states, as a threat against the small states. He had listened as he always did to the ingenious arguments of the gentleman from Virginia (Mr. Taylor) he thought he had attended to his arguments with particular attention on that occasion, because they carried to his mind that conviction which truth always carries couched in the language of sincerity. To him the gentleman's observations on that day conveyed the same ideas and convictions which his explanations conveyed this day in a more copious way ; but to him it appeared impossible—and if he had not heard the gentleman from Jersey (he confessed with astonishment) he could not have believed it practicable to give any colouring of menace to his arguments. The gentleman from Jersey had censured the gentleman from Georgia, for his attention to the state which he represented ; but what bearing had the gentleman's discharge of his duty to his state on the present question ! The gentleman from Georgia had not taken up the present question on the narrow ground of a selfish, jealous and illiberal policy, but upon great national principles ; it was the practice of that gentleman to act ; it was his practice to discharge his duty with fidelity to his state and to his country at large, and such conduct reflected honor on him.

The gentleman from Massachusetts (Mr. Adams) says we had forgot the main object, that we changed our ground and that having first claimed the designating principle we abandoned it in order to keep the election of president out of the house of representatives. The gentleman had misconceived the subject entirely ; if he would only consider the subject again he would find that nothing had been abandoned, nor any thing new assumed —he would find that the principles correspond so exactly as to support and enforce each other. It is to

place the election in the hands of the people we wish to designate—it is for the same purpose we wish to keep the election out of the house of representatives—it is to prevent intrigues we wish to designate, it is to prevent intrigues we wish to keep the choice out of the house of representatives—it is to conform the election out of three instead of five to the spirit of the constitution that we wish to adopt that number—and the wish to keep it out the house of representatives is already sanctioned by the constitution. Where then is this contradiction—this abandonment of one principle and adoption of another. When he referred to one part of the gentleman's speech and compared it with another he felt some concern when he considered the gentleman as the champion of the small states.

MR. ADAMS said he did not profess to be the champion of the small states.

GEN. SMITH—When the gentleman first rose he said he was the representative of a large, and he did call for the champions of the small states to come forth, in their defence; upon the failure of an answer to this challenge he had boldly entered the lists himself in their defence and carried his chivalry so far as to marshal the contending parties contrary to all former order, into 16 small and *one* large state! What was the intention of this mode of distinction, to what end was it directed? Was it not to excite envy and jealousy, the worst of all passions which affect man—was it consistent with professions of regard for the public good to encourage this rivalry of states—the commercial against the agricultural—the east against the south—the small against the large—there was something in this beside liberality. He says he is not the champion of the small states—yet he tells you how they could be stirred up and what would be the consequence if they were roused—he tells you of the distinction between federative and popular principles—and has employed all his ingenuity to induce the belief that we wish to undo the federative principle, to sacrifice it to the popular principle, which is he has told you the thing above all others which would stir up the small states and no doubt arm this classification of 16 against the *one* state. But the people were not to be stirred up by such argument—they would know the value of national union and unanimity to their prosperity and liberty too well to be led away by any thing we may say or do on this floor.

While he was up he would offer an observation or two on what had fallen from the gentleman from South Carolina. He had said that the object of the amendment was to prevent the election of a federal vice president. Undoubtedly such would be the effect of the amendment. The real effect of the amendment was two-fold—to guard against the dangers of intrigue and corruption, and to place the choice in the power of the people. Could that gentleman who was a member of the convention object to render one of its fairest and best principles more safe and secure? Was it an objectionable principle to secure to the majority of the people the right of chusing their chief officers. This was intended by keeping the election out of the other house, and by limiting the number to 3 to leave as little room for corruption as possible, should it ever devolve by any accident on that house to make the choice. For if ever the right should again devolve on that house, he not only saw reason to apprehend corruption among ourselves but dread it from foreign nations. Had our people been as corrupt as European nations generally are, there was a facility for it at our late election; but the members were incorruptible and we were saved. It is to guard against the danger we look for this amendment. That gentleman being a member of the convention who formed the constitution deems it sacrilege to touch that instrument, yet in an early state of discussion he had found that sacred as it was to him there was a part which he wished to change, and had brought forward an amendment for the purpose. The merits of that gentleman's amendment he was not now called upon to dicuss, but with the lights which he at present possessed, it was probable he might give it his approbation; and it surely could not be deemed so extraordinary if other gentlemen should wish to amend certain parts, when one of the framers of the constitution had thought it susceptible of amendment.

MR. PICKERING had not intended to have spoken on this question so far as it concerned the numbers; but as he should probably vote differently from his colleague, he conceived it proper to give his motives for his vote. His wishes for the entire preservation of the constitution were so strong, that he regretted any change was contemplated to be made in it, and he wished if an alteration was made to keep as near as possible to the spirit of the constitution as it now is, and it appeared to him that the

number *three* conformed more to that spirit than the number *five*—he believed it to be the intention of the constitution, that the people should *elect*. As to what gentlemen said concerning the will of the people, he paid but little regard to it, the will of the people, he did not know how the will of the people could be known ; how gentlemen came by it ; it would not be asserted that it was to be found in the newspapers ; or in private society ; in truth he believed it never had been fairly expressed on the subject. We have seen an amendment brought forward from New York, but was that an expression of the public opinion ; if it was, it was a very remarkable one, for it contained an absurdity—visible to every one. He wished to avoid innovations on the constitution, and to preserve the combined operation of federative and popular principles upon which it rested unimpaired.

MR. WASHINGTON hoped the number 3 would be adopted in preference to 5. Nevertheless he approved so much of the principle of designation in the election of the president, and vice president, that rather than lose it he would vote for it with either number.

The yeas and nays being called for on filling up the blank with the largest number according to order—the votes were as follows.

YEAS,		
Messrs. Adams,	Dyton,	Tracy,
Bailey,	Hillhouse,	Wells,
Butler,	Olcott,	White,
Condit	Plumer,	Wright.—12.

  

NOES.		
Messrs. Baldwin,	Franklin,	Potter,
Bradley,	Jackson,	Israel Smith,
Brackenridge,	Logan,	John Smith,
Brown,	Maclay,	Saml. Smith,
Cocke,	Nicholas,	Stone,
Ellery,	Pickering,	Taylor,
Worthington—19.		

The question on the insertion of the number *three* being inserted was then put, and the yeas and nays being demanded by one fifth of the members present—they were as follows :

	YEAS.	
Messrs. Bailey,	Franklin,	Israel Smith
Baldwin,	Jackson,	John Smith,
Bradley,	Logan,	Saml. Smith,
Brackenridge,	Maclay,	Stone,
Brown,	Nicholas,	Taylor,
Cocke,	Pickering,	Worthington,
Ellery,	Potter,	Wright—21.
	NAYS.	
Messrs. Adams,	Hillhouse,	Tracy,
Butler,	Olcott,	Wells,
Condit,	Plumer,	White—10.
Dayton,		

The house then adjourned.

NOVEMBER 30.

The senate resumed the consideration of the report on the amendment to the constitution as amended yesterday, which was read as follows.

1 *Resolved*, by the senate and house of representatives of the 2 United States of America, in congress assembled, two thirds 3 of both houses concurring, that the following amendment be 4 proposed to the legislatures of the several states as an amend- 5 ment to the constitution of the United States which when ra- 6 tified by three fourths of the said legislatures, shall be valid to 7 all intents and purposes as a part of the said constitution, viz. 8 In all future elections of president and vice president, the 9 electors shall name in their ballots the person voted for as presi- 10 dent, and in distinct ballots, the person voted for as vice presi- 11 dent, of whom 1 at least shall not be an inhabitant of the same 12 state with themselves. The person voted for as president having 13 a majority of the votes of all the electors appointed, shall be 14 the president; and if no person have such majority, then from 15 the 3 highest on the list of those voted for as president, the 16 house of representatives shall choose the president. But in 17 choosing the president, the votes shall be taken by states the 18 representation from each state having one vote a quorum for 19 this purpose shall consist of a member or members from two 20 thirds of the states, and a majority of all the states shall be ne- 21 cessary to a choice.

22 The person having the greatest number of votes as v. pre- 23 sident, shall be the v. president if such number be a majority 24 of the whole number of electors appointed, and if no person have 25 a majority, then from the two highest numbers on the list, the 26 senate shall choose the vice president; a quorum for the pur- 27 pose shall consist of two thirds of the whole number of senators 28 and a majority of the whole number shall be necessary to a 29 choice. But no person constitutionally ineligible to the office 30 of president, shall be eligible to that of vice president of the 31 United States.

MR. BRADLEY thought some provision should be made against the difficulties which might arise upon an equality of votes between several candidates. For exami-

ple, tho' the amendment as it stands contemplates a choice from the three highest, there may be four who have equal numbers.

MR. WRIGHT said it was not possible under the designating principle for four persons to have an equal number and have a majority of the whole of the votes likewise.

MR. ADAMS thought that some explanation should be given of the principle upon which the votes were to be counted; and if it were to go to the house of representatives whether the choice was to be made from the three highest numbers, even if three were unequal, or if only two were equal in numbers and the third being one of the highest were still less in number than the other two.

MR. BRADLEY said that under the amendment as it now stood a candidate with one vote may be chosen; for there had been single votes, and there being two candidates equal in votes, then the house of representatives would have the power to chuse the third—he would offer an amendment.

GEN. SMITH wished the gentleman would let his amendment lie over for the present—or it might be printed.

MR. TAYLOR thought that the word highest in the 15th line should be changed.

MR. BUTLER—it is evident gentlemen cannot agree among themselves; now if one side proposes one measure and another a second measure, and so on to a third and a fourth, all of which appeared to him objectionable there was little prospect of arriving at any useful conclusion. Yesterday we had heard of objections to extreme cases; and yet all the arguments used were drawn from extreme cases; if they were data then they must be data now. But it was very clear that the real object was to take away from a portion of society every share of participation in the choice of vice president. If the people could but have heard their representatives yesterday, they could not but smile at them. Notwithstanding the respect which he personally bore for the gentleman from Virginia (Mr. Taylor) he did not completely explain to *his* satisfaction the menace against the smaller states. As to those arguments which were employed against the election devolving on the other house, he thought it was paying the people a poor compliment to say they make a selection of representatives for that

house in whom trust cannot be placed; and that their delegates resemble the representatives of rotten English boroughs; this he thought an extreme case, an extremely hard case. We had been told also that the people wished for the number 3. He should like to have some other evidence than the bare opinion of gentlemen.

THE PRESIDENT called to order.

MR. BUTLER was willing to reserve what he had to say to a future time.

THE PRESIDENT observed the house was now ready to receive amendments proposed by gentlemen.

MR. BUTLER thought the member from Vermont's amendment should have the preference as it was first offered.

MR. BRADLEY's amendment was called up read and lost, ayes 10, noes 20.

A desultory presentation of amendments, without going into detailed argument, now took place—in which general Jackson, Messrs. Taylor, Nicholas, Wright and Tracy took part;

When

MR. ADAMS observed from the multitude of amendments, it now became difficult to comprehend it—he suggested the propriety of adjourning so that the amendments might be all printed which was agreed to.

THURSDAY, DEC. 1, 1803.

The house took up the amended report, as amended the preceding day, which was as follows.:

1 *Resolved*, by the senate and house of representatives of the  
 2 United States of America, in congress assembled, two thirds  
 3 of both houses concurring, that in lieu of the third paragraph of  
 4 the first section of the second article of the constitution of the  
 5 United States, the following be proposed as an amendment to the  
 6 constitution of the United States, which when ratified by three  
 7 fourths of the legislatures of the several states, shall be valid to all  
 8 intents and purposes, as part of the said constitution, to wit :  
 9 The electors shall meet in their respective states, and vote by  
 10 ballot for president and vice president, one of whom, at least,  
 11 shall not be an inhabitant of the same state with themselves; they  
 12 shall name in their ballots, the person voted for as president, and  
 13 in distinct ballots the person voted for as vice president and they  
 14 shall make distinct lists of all persons voted for as president, and  
 15 of all persons voted for as vice president, and of the number of  
 16 votes for each, which lists they shall sign and certify, and trans-  
 17 mit sealed to the seat of the government of the United States,  
 18 directed to the president of the senate. The president of the  
 19 senate shall, in the presence of the senate and house of represen-  
 20 tatives, open all the certificates, and the votes shall then be  
 21 counted. The person having the greatest number of votes for

22 president, shall be the president, if such number be a majority of  
 23 the whole number of electors appointed ; and if no person have  
 24 such majority, then from the persons having the highest numbers  
 25 not exceeding three on the list of those voted for as president,  
 26 the house of representatives shall choose immediately, by bal-  
 27 lot, the president. But in choosing the president, the votes  
 28 shall be taken by states, the representation from each state hav-  
 29 ing one vote ; a quorum for this purpose shall consist of a mem-  
 30 ber or members from two thirds of the states, and a majority of  
 31 all the states must be necessary to a choice.

32 The person having the greatest number of votes as vice pré-  
 33 sident, shall be the vice president, if such number be a majority  
 34 of the whole number of electors appointed, and if no person have  
 35 a majority, then from the two highest numbers on the list, the  
 36 senate shall choose the vice president ; a quorum for the pur-  
 37 pose shall consist of two thirds of the whole number of se-  
 38 nators, and a majority of the whole number shall be necessary  
 39 to a choice. But no person constitutionally ineligible to the  
 40 office of President, shall be eligible to that of vice president of  
 41 the United States.

MR. DAYTON moved to strike out from the words  
 " and vice president" in the 10th line, and all that con-  
 cerned the vice president in that paragraph.

THE PRESIDENT said it was not in order to strike out.

MR. DAYTON then moved to strike out, all that related  
 to a vice president in the 32d line and to the end of the pa-  
 ragraph.

THE PRESIDENT said that it was not in order in that  
 stage of the business to strike out any part.

MR. DAYTON—If there is no way to come at the abo-  
 lition of that office, when the majority of the senate have  
 it so much at heart, he must even give it up as a fruitless  
 attempt.

MR. TRACY concurred in the decision of the chair.—  
 The motion however arose from not reading the reso-  
 lution three times, as was the usage with bills ; in which  
 cases having amended them on a second reading, you  
 cannot amend on a third without the consent of the  
 whole. Here you have amended, and the resolution is  
 taken up amended ; if the senate is determined it shall  
 have but the one reading, there is no remedy ; but the  
 form of proceeding is so different from parliamentary  
 rules, that some correction of it should take place. He  
 asked what would now be the regular question ?

THE PRESIDENT--on inserting the amendments adopted  
 in committee of the whole, in the report of the select  
 committee.

MR. NICHOLAS said, the object of the gentleman from N. Jersey was to abolish the office of vice president ; but the sense of the senate had been already expressed on that subject ; he hoped the time of the house would not be lost on a subject already decided.

MR. DAYTON would not ask any favor.

MR. ADAMS If an amendment cannot be inserted now, he thought the mode of proceeding inconsistent with order ; he understood originally, it was decided that nothing should be considered as final which has not the sanction of two thirds ; and he had held back some amendments under the impression that it was still open. If the rules of the senate determine that a resolution shall have but one reading, there was a palpable contradiction between them and the rules of the other house.

THE PRESIDENT entered into a circumstantial detail of the progress of the proceedings on the amendment ; and concluded by stating that the proceedings had been perfectly regular and according to order ; that in the present stage, all that had been adopted must be considered as ready for the final vote ; that no amendment could be made inconsistent with what had been already agreed to in the detail ; but that it was still open to any amendment not incompatible with what was already adopted.

MR. PICKERING offered an amendment in addition ; and not incompatible with what had passed ; it was to insert after the word "president" in the 27th line the following words. "*But if within 24 hours no election shall have taken place then the president shall be chosen by law.*" This amendment he offered as a remedy by which we could avoid that civil war threatened on a former occasion.

MR. ADAMS wished the motion to be varied so as to come in after the 31st line. The motion he considered as embracing an object extremely important ; and tho' the case was an extreme one, of no election being made it was not unprecedented, for it had very recently happened in Jersey, where no governor had existed for a whole year. He did not approve of the precipitation with which the senate was carrying this amendment forward ; he considered it as intending to prevent a federal vice president being chosen ; he hoped that the house would proceed with more deliberation.

MR. PICKERING consented to the alteration proposed by his colleague.

MR. TRACY thought the amendment offered by the gentleman from Massachusetts like a great many others, it would require a dozen more amendments to explain it; How was the choice to be made of a person to be chosen by law?

MR. PICKERING. The states might chuse by lot; or by ballots in a box, which the president might collect; or a number of names might be put in a box from which the speaker might draw one.

GEN. SMITH admired the ingenuity of gentlemen; as they left all consideration of what the people would wish or think about such a proceeding out of the question—suppose they were to throw the *dice* for the executive chair! It would be *equally wise* with any of the expedients offered, the gentlemen could *serve their friends*—the candidates' names might be written—and the *highest throw have it !!?*

MR. TRACY--however gentlemen may ridicule the ballot it has a precedent, by the constitution of Kentucky it is provided that when two candidates are equal in votes the choice shall be made by lot.

MR. BRACKENRIDGE—that practice has been long exploded.

THURSDAY, DEC. 1.

MR. HILLHOUSE. We had been told some days ago that a candidate, proposed to be chosen by law, was near having his head cut off; such a process would be rather disagreeable to him; he wished to avoid it himself, and to prevent others getting into such a critical situation, and if the amendment were to be adopted, he had no doubt that 19 times out of 20, the choice would devolve on the house of representatives. It was certainly not an unusual practice in elective governments, to choose persons for eminent stations by lot; it was very common at Athens; and they were a very wise and prosperous people, and had an orderly and well regulated government. It would certainly be a preferable mode to the choice at the point of the bayonet. If he had any conception of the operation of the proposed amendment, it would be to produce no election. The complex mode provided by the constitution, was conceived in great wisdom; it was necessary when the country was agitated to operate as a check upon party, and irregular passions. Parties will always have their champions, and they will be always well known; to attack

another champion is to restrain the passions by some degree of uncertainty, during the contest. But by the new amendment, it would be *every man to his own book*, and every demagogue would be a leader and a champion, and in the contest parties would be divided between the two principal champions, and a third would come in and win the race.

If every man were to act correctly, no party passions would prevail on an occasion so important; but carry the champions of two opposite parties to the house of representatives, and instead of voting 37 times before they decide, as on the last occasion; they will vote *thirty hundred* times. You are told that at the last election one was intended by the people for president, and the other for vice president; but the constitution knows no vote for vice president. Alter it as you now propose, and let two candidates be equal, and then you will be told that they were both intended for president. What will be the consequence; on the third day of March, neither party will give out, and it will end in the choice of a third man, who will not be the choice of the people, but one who will by artful contrivances, bring himself to that place with the sole intention of getting in between them. Choice by lot would certainly be better than this. Would not any man prefer a choice by lot, rather than such a course as it would break up the constitution, and leave the people without a president in whom they would confide.

The principle of the constitution, of electing by electors, is certainly preferable to all others. One of the greatest evils that can happen is the throwing of the election into the house of representatives. There Pennsylvania, Virginia, Massachusetts and New York may combine; they may say to the other states—we will not vote for your man, for either of those states giving their whole votes to a third character may bring him in; we see the practice daily in congressional elections, when both parties obstinately adhere to their candidate, a third is set up and carried in to the rejection of both. By the new mode proposed every man will have an interest to intrigue for himself to obtain the eminent station. Gentlemen may suppose that such is the predominancy of their party, they may carry in any president. But no party can long hold an ascendancy in power; they will ill treat each other—or some of them will

disagree, and from the fragments new parties will arise, who will gain power, and forget themselves, and again disagree to make way for new parties. The constitution was predicated upon the existence of parties; they will always exist, and names will not be wanting to rally under, and difference of interests will not be wanting for pretexts—the agricultural will be arrayed against the mercantile—the south against the east—the seaboard against the inland. As to what he had heard about cutting off heads, he supposed that could not have been meant as a threat; in his part of the country such a crime could not take place; the gentleman however, must be supposed to know his neighbours better than he did, but he could not suspect such danger from a valiant people.

MR. PICKERING said the amendment he had offered was suggested to him by the alarming picture of danger drawn by the gentleman from Maryland. He thought the dangers indeed exaggerated; tho' possibly they might not be; but he thought it proper to provide how elections should be conducted and to determine between tumult or civil war and law.

GEN. SMITH did say, that at the last presidential election, the party opposed to the present chief magistrate did contemplate laying aside the popular choice and electing a president by a law to be passed for the occasion at the time; he had also said that had the measure been carried into effect, the person whoever he might have been would have met the fate of an usurper—and his head would not have remained on his shoulders 24 hours.

MR. WRIGHT—it had been said that we meant to precipitate this amendment of the constitution—to make the minority swallow it; he hoped the gentlemen in their eagerness to render it insipid would not make it totally unpalatable to us, as they had proceeded, the modes which they had proposed, struck him at least by their novelty—since what was offered was not satisfactory, and they were willing to commit it to chance, why did they not take up the ancient mode of *grande battaile*, we should have no objection to have it decided by the champions of both parties armed with *tomahawks*! Gentlemen talk of the danger and of the rights of the small states, do they expect that any man can think their professions serious, when they are at the same time willing to commit their

rights to the chance of a lottery ; the rights of freemen are not to be gambled away, or committed to chance, or sorcery, or witchcraft ; we look to reason and experience for our guides ; we seek for the means most conducive to the general happiness, to this reason conducts us ; by experience we correct what may have escaped our sagacity at first, or may have been found defective or erroneous in practice ; it is upon these principles our constitution is founded, it is for these words that the provision is made in the constitution itself for its own amendment ; and it is not compatible with reason or with the principles of the constitution to commit any thing to capricious fortune, in which reason and human rights are concerned. Gentlemen charge us now with a wish to press this amendment forward with precipitation, what do gentlemen mean by this ; a few days only have passed when the same gentlemen were eager for an immediate decision, they declared their readiness to decide immediately, that the subject was as well understood then as ever it would be, and that we delayed the decision to the exhaustion of their patience ; the subject has nevertheless undergone a long discussion, and the time has only served to prove that the gentlemen were at first mistaken, or that the numerous amendments which they have brought forward have their origin in other considerations.

MR. ADAMS had declared that he was ready to give his vote upon the amendment in the first stage ; but it did not therefore follow that when his opinion on the whole was not likely to prevail, that he should endeavour to render it as palatable as possible. He was totally adverse to any decision by lot, and agreed perfectly with the gentleman from Maryland that it was not a mode suited to the principles of our government. But gentlemen say there is a defect, and wish to provide a remedy. He had drawn up an amendment which he should offer to the house, if that of his colleague should not be approved. He confessed he did approve of the designating principle, and for one among other reasons, that the present mode is too much like choice by lot. For instance, A. may be intended by a large majority of the people for president, and B. as vice-president ; yet the votes might be so disposed, or chance might operate so contrary to intention, that the votes for B. should exceed by a vote those for A. This was a defect in the constitution ; and there was a further

reason why he was in favor of the designating principle, and that was, that it appeared to be called for from all parts of the United States. It was very true as had been observed, that sometime ago the opposers of the amendment did press for a decision; but he had seen those dispositions prevail alternately; but the minority had not so much pressed for a decision, as for the discussion of the question.

MR. PICKERING suggested his wish to substitute 48 hours for 24, in his amendment; and if the election should not then take place, a choice to be made in such manner as the house should direct.

The question on Mr. Pickering's motion was then put and negatived without a division.

MR. ADAMS then moved the following amendment. In the 31st line after the word "*choice*" insert

1 "And in case the house of representatives shall not within.....  
2 days effect the choice in manner aforesaid, and there be a vice-  
3 president duly elected, the said vice-president shall discharge the  
4 powers and duties of the president of the U. States. But if  
5 the office of vice-president be also vacant, then the said power,  
6 and duties of president of the United States, shall be discharged  
7 by such person as congress may by law direct; until a new elec-  
8 tion shall be had in manner already prescribed by law."

MR. HILLHOUSE thought that there should be provision made for the choice so made to remain only until such period as the electors could be called again.

MR. DAYTON hoped the gentlemen did not mean to lay a larger patch upon the constitution than the hole they make in it required. Had gentlemen considered that when there is a vice president, that in the case of absence, death or inability, he alone can exercise the powers of the executive, and that you cannot place any person over his head.

MR. ADAMS—the gentleman is certainly right, he had offered his proposition hastily. The observations which arise in this discussion evidently prove that we have not had as full a consideration of the subject as it is susceptible of.

MR. WRIGHT—gentlemen did not perceive that the house of representatives are constitutionally bound and impelled to chuse when it devolves upon them; they are sworn to do their duty. The amendments offered are wholly founded on the presumed corruption of the house of representatives. You may as well make provisions against the corruption of a jury.

MR. HILLHOUSE—there is another point which gentlemen appear not to have taken into view, how the objections of their oaths are to operate or be enforced, when the functions themselves expire on the 3d of March. There is another view of the subject, which ought not to be passed over. The members are sworn to be sure, but one half of the house may sincerely believe that A. is the popular choice ; while the other half may as sincerely believe, that the wishes of the majority are with B. and how are we to compel them by moral obligations, when the obligation rests wholly on the consciences of the individuals. The true principle then would be to make provision for the appointment of a person who should carry on the functions of government till the electors may again meet and choose a president. A provision vesting in the senate the right of choice even for one year, may be a motive for the other house to perform their duty promptly. It was not pleasant to discuss some topics, but we must discuss them, if we mean to avoid evil. We must suppose the existence of faction, of party, and even corruption, for we know that civil passions do and will exist, and that by discussing we guard against them. An house of representatives elected two years before your presidential election, may hold sentiments very different from him ; the public mind may change in the time ; and a party losing power may be led away by passion to conspire and throw every difficulty in the way.

MR. BRADLEY thought the sentiments of the gentleman last up perfectly correct. He was satisfied that if the house made no choice the vice president would administer the government

MR. WRIGHT said that although the functions of the house of representatives would expire with the 3d of March, yet there was assuredly time enough between the 2d Wednesday in February, and the 3d of March to make a proper choice ; nothing but obstinacy or worse would prevent an election ; he would shut them up like a jury until they had made a choice ; he could not conceive a case wherein, any number of men in congress would dare to set themselves up against the country, and put its happiness and their own lives at hazard, in such a way as the gentleman supposed.

GEN. SMITH. The gentleman from Massachusetts, (Mr. Adams) appears not to be perfectly satisfied with his

own amendment ; and certainly the gentleman from Connecticut had shewn that the amendment was defective ; the candor of that gentleman he must acknowledge, he had taken the strongest hold possible of the subject ; he had laid the fruits of experience before you, and pointed out the weakness which you had to protect. He would recommend it to the gentleman from Massachusetts to alter his amendment, so as to make it, that in case the house should fail to chuse, then in four days after the vice-president shall be president.

MR. ADAMS saw a new difficulty there also ; for there may not be a majority for both ; and provision will be necessary for the vacancy of the vice-presidency.

MR. HILLHOUSE thought there would be no danger of the senate omitting to elect their president, who is on a vacancy the vice-president in fact. As to shutting the house up like a jury in a dark room, depriving them of fire, light and food, he thought the measure too strong ; he did not wish to see them at the mercy of a sheriff, who upon their laches might call in the *posse committatus*, and trundle them out of the district, or send them to Coventry. If the house of representatives should not make a choice, he saw no reason why the government should not go on, until an election should take place.

MR. COCKE was astonished to see gentlemen going over so much unnecessary ground. Could they suppose the people so indifferent to their own rights as not to make an election ? Or do gentlemen mean all these cavallings for amusement, to display their ingenuity at finding fault. If there should be any failure of choice, why could not the secretary of state arrange and carry on the executive business until an election should again take place ? MR. TRACY rose....

MR. COCKE called for the question—the question.

MR. TRACY—does the gentleman mean to call for the question while I am on the floor—I will not sit down upon such a call—what is the question sir ?

MR. DAYTON hoped the gentleman from Massachusetts (Mr. Adams) would withdraw his amendment.

MR. ADAMS thought the deliberation of one or two hours could not be thrown away.

MR. WRIGHT hoped the decision on the amendment would not be pressed upon the house. What ! is it proposed to take the choice of president out of the hands of the electors, and place it wholly in the house of re-

presentatives and tell them, hold out only four days, and you will then have the whole power in your hands, you may set aside all consideration for the wishes of your constituents, set popular opinion at defiance, and please yourselves by chusing a president of whom the people never thought. Gentlemen should avoid this dangerous path which they wish to prepare, the people will not bear to be frowned upon by those whom their breath has made and can unmake.

Sir, it is our wish to prevent all these dangerous or fatal courses and consequences—and we should keep in mind, that whatever we may conclude upon here is completely guarded not alone by the necessary consent of the other house, but that of three-fourths of the states. The constitution, sir, would be preferable as it is without the odious and anti-republican forms which gentlemen propose to engross upon it—What sir, determine a most important principle of effective government by a non-effective act—determine an election by holding out a temptation to non-election ! He should prefer having the choice open to the representatives bound by oath, by duty, and by the constitution, to such an alternative ; if men so placed would be so blind to the calls of duty, the public indignation would bring them to their senses before the 4th of March. Honor and their oaths, sir, would bind them ; he had too much confidence in the choice of his countrymen, and of the virtue and morality of those who are sent to the important stations of representatives, to think they disregard their oaths or their duty. Some gentlemen tell us indeed they know of no persons who would raise their hands against an usurper, if he had been set up, and insinuate that it would be a crime ; but they find ready belief for acts ten thousand degrees more base and heinous in themselves ; they can believe their countrymen capable of the breach of every tie of honor, of oaths and of duty ; gentlemen must speak from their own knowledge ; for his part he was happy to say there were no such men among his acquaintance nor in his neighbourhood.

The arguments which gentlemen draw from their experience, would be with him powerful ones for opposing the measure which they are brought forth to sustain.—For if men elected to such stations as seats in congress are capable of the breach of every obligation of honor and oath, the greatest care should be taken to keep the

power of election forever out of their hands, by rendering it impossible for the people not to elect; nay he would prefer carrying the election to the individual vote of every citizen, without the intervention of electors, to suffering it to go into any body liable to such dishonor.

An observation of the gentleman from Massachusetts (Mr. Adams) produced a sensation which at once shewed that something besides the care of the people's rights had an influence here; he proposes that the proper officer, the vice president, should succeed to the presidential chair upon a failure of election or vacancy after a few short months; whence arose the agitation and interest excited by this proposition?—is it because we wish not to see a man seated in the executive chair whom the people never contemplated to place there, and who never had a vote.

MR. DAYTON—You are about to designate who shall be president and who vice president; and some gentlemen have gone so far as to favor the choice of one who had not even a vote for either office. The gentleman from Massachusetts (Mr. Adams) indeed professes to have in view the succession of the vice president to the executive chair when vacant. But gentlemen should perceive that if you designate, the principle will be totally changed. He could not assent to the conclusion of some gentlemen on another point, if any thing could be understood from the constitution more clearly than another, it was that the votes are given to two persons for president, and that, as has been observed before, the constitution never notices a vote for the office of vice president. How then can it be said which was the person intended? The gentleman from Maryland (Mr. Wright) had said, that one of the candidates at the late election had not a single vote for president, while the official returns shew, that each and every vote was the same for both candidates as president.

MR. TAYLOR—that matter appears susceptible of a very simple explanation; there can be no question that in form, the votes for each candidate were equal; but that is not the question, the *quo animo* must be taken into view; would any gentleman say that no preference was intended. It is very true that such was the form, but looking to the well known intention, have you not in the very fact stated an evidence that the principle of designa-

tion is essential, were it only to prevent the consummation of an act never contemplated or expected.

MR. DAYTON was for a postponement of the amendment.

GEN. JACKSON was for postponement also.

MR. ADAMS's amendment was postponed and ordered to be printed.

MR. TAYLOR wished to offer an amendment as an addition to the report—

“ Provided, that whenever the right of choosing a president shall devolve upon the house of representatives, the vice president shall act as president, in case they fail to make such choice, in like manner as in case of the death or resignation of the president.”

It was moved that this, with the other amendment, be printed—and the house adjourned.

DECEMBER 2.

The order of the day being the amendment proposed in the house of representatives, to be made to the constitution of the United States, and the report of the committee being under consideration.

MR. TAYLOR of Virginia, desired to withdraw his motion of the preceding day, in order to accommodate the terms of his proposition to the wishes of gentlemen. His only object was to obtain the principle, and provided that was obtained in such a manner as to promise an accomplishment of the good intended thereby, he should consider the words in which the provision was to be couched of inferior moment; in lieu of the addition which he offered before, he now proposed to insert after the word *choose* in the 32d line the following words:—“ and if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the 4th day of March next following, then the vice president shall act as president, as in case of the death or other constitutional disability of the president.”

MR. ADAMS had no sort of objection to this addition to the paragraph; it reached his ideas as far as it went; but he conceived that though this made a very necessary provision for the case of the president, it did not go far enough, inasmuch as no provision was made in case there should be no vice president. He would submit this case to gentlemen, that if there was no vice president existing nor any more than a president chosen, in the event of a high state of party spirit, would it be dif-

ficult to foresee, that there would be much room left for contention and evil ; unless provision should be made against the contingency, therefore, the amendment would be imperfect, in his mind ; like the gentleman from Virginia, he was not tied to words, but he thought it worth while to employ two lines to provide against the danger.

MR. HILLHOUSE concurred in the amendment of the gentleman from Virginia, but he hoped the idea of the gentleman from Massachusetts would also be adopted.

MR. PICKERING objected to the length of time allowed for the house of representatives to decide. We have been told that the small states from their smaller number of votes are exposed to corruption ; he wished no time to be left for corruption to operate, and he therefore desired that the period for the house of representatives to decide should be limited to forty-eight hours or three days.

MR. WRIGHT approved of the amendment that had been offered in all its parts ; and the more so as it in effect supplies a deficiency which exists in the constitution even as it now stands.

The amendment was agreed to 22 being in the affirmative.

MR. ADAMS offered another amendment of the following effect, to be added to the provision concerning the election of vice president—"and if there shall be no vice president duly elected within ten days after the 4th of March, then the power and duties of the president of the United States shall be discharged by such person as shall be by law invested with that power, until such time as a new election by electors shall take place."

MR. TRACY wished to know why *ten* days was the period fixed?

MR. ADAMS—because the amendment proposed gives the house of representatives until the 4th of March, during which time the old vice president continues in office ; and ten days appeared to him a reasonable period ; but he was not tied to any particular number of days.

MR. TRACY would prefer the word *vacant* suggested yesterday, to the not duly elected.

MR. HILLHOUSE was not disposed to concur with the proposed amendment ; he did not think a period of agitation a proper one to make choice of an officer of so much power ; he would prefer making provision by law

*before the happening of the event*; for in a high state of party, he could see no likelihood of an agreement, and out of disagreement confusion might arise. His wish was to have some person designated who should discharge the executive duties until an election should take place; and that this officer should be previously fixed upon, so that party spirit should have no room for agitation.

GEN. JACKSON could not discern the necessity of the proposition now offered; the case proposed to be provided against, he thought so extreme as likely never to happen. Besides the mover appeared not to have taken it into consideration that one third of the senate go out at the close of the second session of every congress by rotation, and would he have only two thirds to make the law which was to provide for this choice. Upon the principle of the general amendment, he had not at first made up his convictions, but the amendment adopted had removed his doubts, and he thought this addition to the amendment unnecessary. He hoped the senate would abide by that they had already agreed to, and preserve the right of choice to the people.

MR. WRIGHT—there was another difficulty which the gentleman from Massachusetts appears not to have foreseen. To make a law it is not enough that the Senate are present even if complete; the house of representatives is necessary to an act of legislation, and that body can have no existence after the 4th day of March, nor within the ten days suggested, for they could not if all elected, be called even by proclamation within that time; and further if there should be no election of president, there would be no power to convene congress—so that the proposed addition is improper altogether.

MR. ADAMS did not feel extremely solicitous for the proposition; when the constitution is proposed to be amended, however, he was disposed to offer every suggestion which might appear to him calculated to render it more perfect. The objections offered by the gentleman from Georgia, high as he respected his opinion, did not appear to him conclusive; for his calculations of time and circumstance do not entirely correspond with experience past; the president has at all times heretofore been inaugurated, after the house of representatives had closed its session by limitation, and the senate had been uniformly assembled for the purpose of the in-

auguration. Here then is a body in session, and if there shall not be a vice president chosen, they can and must proceed to choose one, and that choice would of course fall as proposed, upon one of the candidates.—The gentleman from Connecticut, (Mr. Hillhouse) had mistaken his view, concerning the choice of a person by law; his intention certainly was to provide for the future contingency by a previous law.

GEN. JACKSON still conceived the gentleman's proposition founded in mistake; for it would be impracticable for the senate to act, since according to the rules of the senate two thirds of the whole are necessary to form a quorum; one third must constitutionally go out of that body at the time, and the absence of a single member would disable the senate from business.

MR. ADAMS—there would remain still two thirds of the senate, and it would be the duty of the executive to call them together, as had been done in some cases; and as to the deduction of the third by rotation; there are several of the small states that elected their senators several months before the period. To argue that they would neglect it would be to argue that the states are indifferent to their representation on this floor.

GEN. JACKSON—we know that vacancies do occur from other causes than indifference or neglect of states; we know that at this moment New York has but one representative on this floor—and that Jersey had but very lately been so much embarrassed by a faction as to leave her for sometime without more than one senator.

The question on the amendment of Mr. Adams was then put and lost without a division.

MR. PICKERING. The case which the gentleman from Georgia founded his arguments upon applies to a *non-election*, and thought such a case an extreme one; he thought differently, and the constitution as it now stands has made a provision for such an exigency.—Some provision should be made for such a case, he would therefore move an amendment, which would provide for the event of a *non-election*—to insert after the words president: “But if on the 4th of March “the office of vice president shall be vacant, then the “powers which devolve by the constitution on the vice “president, shall be exercised by such persons as the “law shall direct until a new election.”

MR. HILLHOUSE. This amendment would supply all that was proposed by the allowance of ten days in a

former amendment, and it seemed to him indispensable, because as the non-election of both president and vice president may happen, there should be some organ to keep the wheels of government in motion. It appeared to him to be as necessary to provide for this contingency as for that of the death of the president or vice president.

The amendment was lost without a division.

The main question of the whole resolution then recurring.

MR. WHITE, of Delaware—MR. PRESIDENT: It may be expected that we, who oppose the present measure, and especially those of us who belong to the smaller states, and who think the interests of those states will be most injuriously affected by its adoption, shall assign some reasons for our opinion, and for the resistance we give it—I will for myself endeavor to do so. I know well the prejudices of many in favor of this proposed amendment to the constitution—I know too and acknowledge with pleasure, the weight of abilities on the other side of the house by which those prejudices, if I may so be permitted to call them, will be sustained—this might perhaps be sufficient to create embarrassment or even silence on my part, but for the consciousness I feel in the rectitude of my views, and my full reliance on the talents of those with whom I have the honor generally to think and act. Upon a subject of the nature and importance of the one before us a great diversity of sentiment must be expected, and is perhaps necessary to the due and proper investigation of it. Without detaining the senate with further preliminary remarks, presuming upon that patience and polite indulgence that are at all times extended by this honorable body to gentlemen who claim their attention, I will proceed immediately to the subject of the resolution—barely premising that notwithstanding the opinions of the gentleman from Virginia (Mr. Taylor) and the gentleman from Georgia (Gen. Jackson) whose opinions I highly respect, I must yet think with my honourable friend from Jersey (Mr. Dayton) that the constitution of the United States bears upon the face of it the strongest marks of its having been made under the influence of state classifications.—It was a work of compromise, though not formed, as stated by the gentleman from Virginia, by the large states yielding most, but by the smaller states

yielding much more to the general good. It will be recollect that previous to the adoption of the constitution on all legislative subjects, in fact on every measure of the constitution, each state had an equal voice ; but very different is the case now when in the popular branch of your government, you see one state represented by twenty two members, and another by but one, voting according to numbers. So that notwithstanding the ideas of those gentlemen, and the declaration of an honorable member from Maryland on my right (Gen. Smith) that during his ten years service in congress, he had never seen any thing like state jealousies, state divisions or state classification, I must be permitted to predicate part of my argument upon this business. Should any gentleman be able to shew that the foundation is unsound, the superstructure of course will be easily demolished. Admitting then, sir, for the sake of argument, that there were no very great objections to this proposed alteration in the mode of electing a president and vice president, and that it were now part of the constitution, it might be unwise to strike it out ; unless much stronger arguments had been urged against than I have heard in favor of it, yet I would not now vote for its adoption. What appears specious in theory may prove very inconvenient and embarrassing in practice, and my objections go to any alteration of the constitution at this time ; we have not given it a fair experiment, and it augurs not well to the peace & happiness of the United States to see so much increasing discontent upon this subject, so many projected alterations to the great charter of our union and our liberties ; not less than four are now upon our tables, and which if adopted will materially change the most valuable features of the constitution. The first alters the mode of electing the president and vice president—the second changes the ground upon which the vice president is to be appointed by the senate, in case one is not elected by the electors according to the constitution—the third extends the powers of the senate in the choice of this latter officer beyond what was ever contemplated by the people of this country—and the fourth which is not now immediately before us, goes to incapacitate any citizen from being eligible to the office of president more than a certain number of years. All these important changes we are about to introduce into the constitution at once, and indeed, were attempted to be forced into a final vote upon them, in little more

than the space of one day from the moment they were submitted to us. Are we aware of what we are about? Is this the way in which the constitution was formed? Was it put together with as much facility and as little reflection as we are tearing it to pieces? No, Mr. President, it was constructed after much thought, after long and mature deliberation, by the collected wisdom and patriotism of America, by such a set of men as I fear this country will never again see assembled; and we should be cautious how we touch it. The fewer changes we make in it, the longer it remains—the older it grows the higher veneration will every American entertain for it—the man born to its blessings will respect it more than him who saw its birth; he will regard it not only as the great bulwark of his liberties but as the price of the blood of his ancestors—as a sacred legacy from his father, deposited with him for the benefit of himself, and in trust for his posterity. But if in this way every succeeding congress, every party enjoying the short lived triumph of a day, shall be mutilating it with alterations from whatever motives, either to thwart their political opponents, or to answer particular purposes, ere long no trace of the original instrument will remain, it will be kept in a state of tottering infancy, until some Gallic Cæsar, turning to his advantage an unhappy moment of popular phrenzy may make the last change, by trampling upon its ruins, and substituting the strong arm of power in its place.

What sir, let me ask, are the objects of these proposed amendments? The first we are told will so mark, so designate the man to be president as to close forever the doors upon that subject! could this be the effect, the adoption of it would indeed be wise and provident, but I fear a directly contrary tendency, that it will open a new and an immense field for intrigue.—The United States are now divided, and will probably continue so, into two great political parties—whenever, under this amendment, a presidential election shall come round, and the four rival candidates be proposed, two of them only will be voted for as president, one of these two must be the man; the chances in favor of each will be equal. Will not this increased probability of success, afford more than double the inducement to those candidates, and their friends, to tamper with the electors, to exercise intrigue, bribery and corruption as in an election upon

the present plan, where the whole four would be voted for alike, where the chances against each are as three to one, and it is totally uncertain which of the gentlemen may succeed to the high office? And there must indeed be a great scarcity of character in the United States, when in so extensive and populous a country, four citizens cannot be found either of them worthy even of the chief magistracy of the nation. But Mr. President, I have never yet seen the great inconvenience that has been so much clamored about, and that will be futurely provided against by substituting this amendment. There was indeed a time when it became necessary for the house of representatives to elect by ballot a president of the United States from the two highest in vote, and they were engaged here some days, as I have been, told in a very good humored way, in the exercise of that constitutional right, they at length decided—and what was the consequence? The people were satisfied, and here the thing ended. What does this prove, that the constitution is defective? No sir, but rather the wisdom and efficiency of the very provision intended to be stricken out, and that the people are acquainted with the nature of their government—and give me leave to say if fortune had smiled upon another man, and that election had eventuated in another way, the consequence would have been precisely the same; the great mass of the people would have been content and quiet; and those factions restless disorganizers, that are the eternal disturbers of all well administered governments and who then talked of resistance, would have had too much prudence to hazard their necks in so dangerous an enterprise. I will not undertake to say that there was no danger apprehended on that occasion. I know many of the friends of the constitution had their fears, the experiment however proved them groundless; but what was the danger apprehended, pending the election in the house of representatives? Was it that they might choose Colonel Burr or Mr. Jefferson president? Not at all—they had, notwithstanding what had been said on this subject by the gentleman from Maryland (Mr. Wright) a clear constitutional right to choose either of them, as much so as the electors in the several states had to vote for them in the first instance—the particular man was a consideration of but secondary importance to the country; the only ground of alarm was lest the house should separate.

without making any choice and the government be without a head, the consequences of which no man could well calculate. The present attempt, to say the least of it, as has been well observed by my honourable friend from Jersey, (Mr. Dayton) is taking advantages of a casualty to alter the constitution that astonished every one when it happened, and that no man can imagine in the ordinary course of events will ever arise again ; sir, every hour that is added to the age of our government, every day's increasing population of our country, every state admitted into the union, renders still more remote even this improbable contingency. Gentlemen have urged with exulting confidence and particularly the honorable gentleman from Maryland (gen Smith) that the people have long thought on this subject, and prepared for the amendment and expect its adoption. I respect the sentiments of the people as highly as any man when they are well digested and clearly expressed—but in my mind this is a dangerous ground to advance far upon without examining it well for ourselves : it is an argument that will apply alike to almost every question of importance and goes to preclude debate upon them—for it is well known that there are few such submitted to us that have not been previously the subject of thought and speculative conversation out of doors. Ours is a country of politicians and from the nature of our government must continue so, every member of society, feels such a portion of interest in the affairs of the nation, as to excite enquiry, be his lot humble or exalted, be his sentiments right or wrong, he expresses them as he is entitled to do with freedom—but is it abroad in the country that the most important measures of the government are to be matured and decided upon ? Is it in private circles, in caucuses, in clubs, in coffee houses, streets and bar rooms that great constitutional questions are to be settled ? And are we convened here but to register the crude decrees of such assemblages, or only for the humble purpose of answering to the call of our secretary with a yea or nay ? If the argument proves any thing it amounts to this—Would the gentleman from Maryland or any other honorable member, be content to hold his seat upon such terms ? If so he may indulge himself in one consolation that no private citizen would envy him the place ;—but for myself I claim the exercise of higher and more responsible privileges of thinking and acting for myself ; holding it my duty, so

far as I am capable, to assign to my constituents the reasons that govern my public conduct.

It has of late, Mr. President, become fashionable to attach very little importance to the office of vice president, to consider it a matter but of small consequence who the man may be ; to view his post merely as an idle post of honor, and the incumbent as a cypher in the government ; or according to the idea expressed by an honorable member from Georgia, (Gen. Jackson) quoting, I believe, the language of some eastern politician, as a fifth wheel to a coach ; but in my humble opinion this doctrine is both incorrect and dangerous. The vice president is not only the second officer of government in point of rank, but of importance, and should be a man possessing and worthy of the confidence of the nation. I grant, sir, should this designating mode of election succeed, it will go very far to destroy, not the certain or contingent duties of the office, for the latter by this resolution are considerably extended, but what may be much more dangerous, the personal consequence and worth of the officer ; by rendering the electors more indifferent about the reputation and qualification of the candidate, seeing they vote for him but as a secondary character ; and which may occasion this high and important trust to be deposited in very unsafe hands. By a provision in the 1st sect. of the 2d art. of the constitution "in case of the removal of the president from office, or of his death, resignation or inability to discharge the powers & duties of the said office, the same shall devolve on the vice president"—and he is constitutionally the president, not until another can be made only, but for the residue of the term, which may be nearly four years ; and this is not to be supposed a remote or improbable case. In the state to which I have the honor to belong, within a few years past two instances have happened of the place of governor becoming vacant, and the duties of the office, according to the constitution of that state, devolving upon the speaker of the senate. We knew well too, generally speaking, that before any man can acquire a sufficient share of the public confidence to be elected president, the people must have long been acquainted with his character and his merit ; he must have proved himself a good and faithful servant, and will of course be far advanced in years, when the chances of life will be much against him —It may indeed, owing to popular infatuation, or some

other extraordinary causes, be the ill fate of the country that an unworthy, designing man, grown old and grey in the ways of vice and hypocrisy, shall for a time dis-honor the presidential chair, or it may be the fortune of some young man to be elected, but those will rarely happen. The convention in constructing this part of the constitution, in settling the first and second offices of the government, and pointing out the mode of filling, aware of the probability of the V. P. succeeding to the office of president, endeavoured to attach as much importance and respectability to his office as possible, by making it uncertain at the time of voting which of the persons voted for should be president and which vice president; so as to secure the election of the best men in the country, or at least those in whom the people reposed the highest confidence, to the two offices—thus filling the office of vice president with one of our most distinguished citizens, who would give respectability to the government, and in case of the presidency becoming vacant, having at his post a man constitutionally entitled to succeed, who had been honored with the second largest number of the suffrages of the people for the same office, and who of consequence would be probably worthy of the place, and competent to its duties. Let us now, Mr. President, examine for a moment the certain effect of the change about to be made, or what must be the operation of this designating principle, if you introduce it into the constitution; now the elector cannot designate, but must vote for two persons as president, leaving it to circumstances not within his power to control which shall be the man: of course he will select two characters, each suitable for that office, and the second highest in vote must be the vice president; but upon this designating plan the public attention will be entirely engrossed in the election of the president, in making one great man. The eyes of each contending party will be fixed exclusively upon their candidate for this first and highest office, no surrounding object can be viewed at the same time, they will be lost in his disk. The office of president, is in point of honor, profit, trust, and influential patronage so infinitely superior to any other place attainable in this government, that in the pursuit and disposal of it, all minor considerations will be forgotten, every thing will be made to bend in order to subserve the ambitious views of the candidates and their friends. In this angry conflict of parties,

amidst the heat and anxiety of this political warfare, the vice presidency will either be left to chance, or what will be much worse, prostituted to the basest purposes, character, talents, virtue, and merit will not be sought after in the candidate—the question will not be asked, is he capable? is he honest? But can he by his name, by his connexions, by his wealth, by his local situation, by his influence, or his intrigues, best promote the election of a president? He will be made the mere stepping stone of ambition. Thus by the death or other constitutional inability of the president to do the duties of the office, you may find at the head of your government the first magistrate of the nation, a man who has either smuggled or bought him himself into office. Who, not having the confidence of the people, or feeling the constitutional responsibility of his place; but attributing his elevation merely to accident, and conscious of the superior claims of others, will be without restraint upon his conduct, without that strong inducement to consult the wishes of the people, and to pursue the true interests of the nation, that the hope of popular applause, and the prospect of re-election would offer. Such a state of things might be productive of incalculable evils; for it is, as I fear time will shew, in the power of a president of the United States to bring this government into contempt and this country to disgrace, if not to ruin. Again Sir, if this amendment succeeds, if you designate the person voted for as president, and the person voted for as vice president, you hold out an irresistible temptation to contracts and compromises among the larger states for these offices; it will be placing the choice of the two highest officers in the government so completely within their power, that the five largest states, viz. Massachusetts, New York Pennsylvania, Virginia and N. Carolina, may not only act in every previous arrangement relative to the appointment of these officers without the necessity of consulting the other twelve, but may totally exclude them from any participation in the election. The whole number of electors, according to the present representation in congress will be one hundred and seventy seven, these five states will have ninety six of them, a clear majority of eight, and should they agree among themselves, they can say absolutely who shall be the president, and who the vice president; and other twelve states will not have

even the humble privilege of choosing between their candidates; for their whole number of votes being but eighty one given to the candidate for the vice presidency as president, would be but thrown away, since the other would still have his designated majority of eight for that place. Should it be said that such a coalition is improbable, I answer that my opinion is different and it is enough for me that it is possible. Again, sir, counting only the states of Massachusetts, New York, Pennsylvania and Virginia, these four will be found to be entitled to eighty-two electors, wanting seven of a majority of the whole number, so that leaving North Carolina among the smaller states, if they unite, and can by any species of influence, by promises of offices, bribery or corruption gain over to their interest but seven of the electors belonging to the other states, they can in like manner appoint whom they please—I might go on to shew that lopping even Massachusetts from this list, the other four, viz. New York, Pennsylvania, Virginia and North Carolina could with very little difficulty effect the same object, since they are entitled to seventy-seven electors. And now let me ask gentlemen representing the twelve smaller states, if they are prepared to yield up not only the high and honorable ground upon which the constitution has placed them in the house of representatives in case of an election for a president to be had there; but to vest in the five larger states, or even in a smaller number of them, whenever they shall be pleased to exercise it, the exclusive power of appointing the president and vice president of the U. States.

MR. COCKE—the gentleman last up has, to be sure, in a well studied speech, as often times before, sounded the tocsin of alarm, and called in even the aid of prophecy to enforce his fears. But, Sir, this senate has been so much accustomed to these false alarms, that it appears to me the only danger we are in is that of going wide of the subject, and taking up our time with matters of imagination, instead of sticking to matter of fact. The object of this amendment to the constitution is only one thing, one plain and simple principle, to enable the people to discriminate in the choice of their fellow citizens for the offices of president and vice president. Gentlemen tell us of large and small states, but is this amendment more in favor of the large than small; is this not such an amendment as will induce the large states to

promote the election by the people? Is it not such an amendment as will prevent that corruption which so many gentlemen on all sides apprehend, if it goes into the house of representatives? Where is the use of gentlemen sounding an alarm of danger which they do not really believe themselves? Why will gentlemen talk of the danger of confusion, threaten us with it, when the whole confusion arises from the acts of gentlemen themselves? We have listened here with patience for weeks together to the arguments of gentlemen; they have had every fair opportunity to give their opinions, and it is now time to come to a conclusive vote. We hear nothing now but a repetition in fine dressed words of what we have heard from day to day for weeks; and all for what purpose, to excite our fears, fears which it is our wish to guard against in reality.

Gentlemen tell us—first—they suppose the people may not elect a president and vice president: Upon what ground do they pretend to believe this possible; are the people so disgusted with their liberties; are they so little attentive to their rights—are they tired of a government that every day makes them more happy. No, sir.

They then tell us that they do not wish that the election should go into the house of representatives; and then that that house may not elect; and then our *very honorable selves* are recommended to make up all deficiencies! Do gentlemen doubt themselves, or can they compel congress to pass such a law as they require for the election of a dictator, without a voice from the people. If gentlemen fear that the people will not elect, and that the other house will not elect, with equal reason they may fear that the other house would not make the law they wish for.

But it is said that some of us are governed by a fear that the people may not have a choice in the election of vice president. If it will afford gentlemen any satisfaction, I tell them that it is my wish that the people should elect the vice president as well as the president. I say, I do not understand the principle of minorities governing majorities. The law of the minority is not the law of the constitution, and it is not the law for me. How gentlemen can pretend to advocate the constitution, and talk of the minority giving law, is to me, very surprising; they say too the constitution is very sacred to them,

and it should not be altered ; so it is too, every word sacred to me ; but among its most sacred parts, I find that the constitution provides for its own alteration and amendment ; not indeed by a minority, by a very large majority in both houses, and by a much larger majority of states. Gentlemen are willing that a minority should elect a vice president, but they are not willing that three fourths of the states should amend the constitution ; they pass by the open door on the right hand to get in at a private passage.

MR. WHITE—to order—the gentleman is not surely, using any arguments of mine—they are of his own making—

MR. COCKE—the gentleman from Delaware thinks the minority should govern—that is his argument, however he may disguise it ; I think the majority should govern ; I like to speak out—I do not wish to have a man put upon us contrary to our wishes—what, shall the majority abandon the right of choosing a man whose opinions are conformable to theirs, and suffer a man of principles hostile to theirs to be put upon them. I am, sir, for a government of the people, whether well born or born by accident ; I am for a government not of checks and balances, but one that will not suffer a bad check upon good principles.

But we are once more told of a Gallic Cæsar, and our fears are to be provoked this way too—but this more than the rest of alarms will not do ; we fear no Cæsar foreign or domestic. We have indeed seen the day when we were near getting a president not of our choice ; but because we have escaped from the danger and the intrigue of that day, are we to take no precaution against such measures again. It is to guard against such dangers we wish to amend this constitution. But gentlemen tell us we have not given it a fair trial. I think we have and found it defective ; here we have been a week and upwards, labouring and bewildered in every kind of discussion, and what have we come to, exactly where we set out—Not one of us has altered our opinions—we have argued and listened and done nothing—why, because gentlemen have been attempting impossibilities, there is no such thing as moving either side from their principles ; one side thinks the minority should give the law—we think with the constitution the right is in the majority—and we will submit to no other law. I am for the amendment and for a discrimination.

MR. PLUMER had generally contented himself with a silent vote on public questions; on the present occasion he could not as the representative of a small state pass the question without delivering his reasons for his vote. He agreed with gentlemen that the constitution had provided for its amendment; but there was a feature equally strong, and principles more generally diffused, thro' that instrument, a strong guard against encroachments and innovations.

There are two modes by which the constitution may be amended. The first is that when two thirds of the states think proper to call a convention, and when such amendments as this convention may propose attain the subsequent ratification of three-fourths of the states.—In this case congress has no other right of interference than to enquire whether three-fourths of the states have given their due concurrence to the amendment proposed.

The other mode of amendment is that which we are called upon to perform in the manner proposed by the report now under discussion; it is an amendment to which consent of *two thirds* of both houses of congress is in the first instance necessary, and to render it obligatory must have the subsequent ratification of three fourths of the states.

The latter mode of amendment was now to be considered, and on the first view he thought it proper to state, that according to his judgement of the constitution two thirds of both houses meant not simply two thirds of all the members *present* in each house, but of all the members *elected*. By a reference to similar principles in other parts of the constitution this opinion was greatly strengthened; as in the case of a law which the president may object to, he may return the bill to both houses with his reasons for refusing his assent to it, and if after reconsideration two thirds of one house shall repass it, and two thirds of the other house shall re-approve, then it shall become law—another case wherein large proportions or majorities are resorted to is when the election of a president devolves on the house of representatives where the votes are to be taken by states, each state having one vote; but though a quorum of two thirds only may be present, a majority of all the states shall be necessary to a choice. In like manner in cases of impeachment the concurrence of two thirds of the members present is required; so treaties are ratified with

the concurrence of two thirds of the members *present*; members of either house may be expelled with the concurrence of two thirds.

Here in all these various cases there are distinctions made in the proportions applicable to the particular nature of the cases; in some the proportions are two-thirds of the members present; in others two-thirds of the several houses. In the case of the amendment to the constitution it is in the latter terms, and evidently means two-thirds of the whole number elected. Indeed the reason of the case proves that it must be so construed, for if two-thirds of the members present could alter the constitution, at the present time twelve members being little more than a third of the whole house may form two-thirds of a quorum. He thought it necessary to go into those observations, that the senate might guard against party innovations, and to draw their attention to the principles of the constitution from which he did not wish to deviate. In the case of amendment it was evident to him that two-thirds of the whole number of each house was requisite to validate an amendment.

Instructions from the legislatures of some states to their representatives have been mentioned. This he considered as altogether irregular. The state legislatures were intended as a check upon the propositions which might be offered by congress, but here they become their counsellors and guides; this he considered as an usurpation of authority. Instructions may be proper in some cases, but in that of amendments they are improper, because it is an interference or an attempt to deprive congress of its own right of judgment on what comes before them—in a case where the final decision rests with the adviser.

As to the doctrine of amendments generally, gentlemen go too far. There are certain rights preserved which cannot be changed, and which no amendment can reach. For example, no state can be deprived of its equal representation in this house by two thirds, nor any other number without its own consent; you cannot make any alteration in the uniformity of taxation on states; nor in the uniformity of naturalization, nor concerning the importation of slaves before the year 1808; neither can you by any numbers countenance or establish any other form of government, or suffer it to be established, than a republican form of government, for

the constitution guarantees that form to each state.—This is a fundamental principle which you have no power to alter, and the authority to amend in the cases admitted cannot be construed to go to the alteration of a fundamental principle, it goes only to the forms. The amendment now before you appears to be fundamental ; the election of president and vice president was purposely rendered complex, for wise and wholesome ends ; and whoever will advert to the fate of countries where free government has prevailed, will perceive that the complexity of election was intended to guard against the evils which produced their destruction. This doctrine of amendment is specious, but see the effects of it in another country. How many new constitutions and amendments have been introduced in France, each professedly more perfect than the other, till the people wearied by frequent change established a despotism. Shall we not be warned by their fate ?

But we are told the people of the United States desire this amendment ; we should be glad to hear how this has been manifested ?—have conventions been called ?—have the state legislatures declared it ?—No ; we have heard no such things. The people are not in favor of a measure calculated to give strength to the powerful and to weaken the already weak ; it has a tendency to throw the choice perpetually into the hands of the large states ; four and a half states may by this amendment perpetually elect the president ; under the present form the large states cannot so easily unite. Can this measure then have a tendency to conciliate and harmonize the several states ? No, jealousy must be the result, and the evil will be greater as it relates to the choice of a vice president ; inferior men will be chosen to that office ; men unfit for superior command ; the office will be carried to market ; the friends of an ambitious candidate for the president will barter their votes to him who will consent not to be a rival ; and this is not the only evil, for the four large states in the vice president chosen will give themselves a third senator on this floor.

There was one defect already in the constitution, which this amendment would render worse. The holders of slaves in the different states elect eighteen electors of president and vice president by means of that population. This operates injuriously on those states which have not that species of property. You now destroy the

complex system of election, and yet leave this disproportionate influence of eighteen electors to exist.

Beside however gentlemen may flatter themselves, the amendment is not adequate to the correction of the supposed evil. It would no doubt be desirable to prevent the election from going to the house of representatives ; but the proposition now under consideration renders it even worse, for it renders it probable that no choice whatever may be made ; and will not the same or greater difficulties then exist ? It is true that they will have nothing to do with the choice of vice president. But will they agree on the president in such a case with more facility when they have equal numbers upon a discriminating ballot, than when there are two candidates upon the same ballot ; he conceived the difficulty would be greater.

GEN. JACKSON. The gentleman last up and another who preceded him from Massachusetts (Mr. Pickering) had taken a ground which he did not expect to hear in the elective senate of a free people. They questioned not only the propriety of the present amendment, but of all amendments. This he considered as of no great consequence, but he thought it merited notice, because the dislike of amendments is expressed by gentlemen who wish to have it believed that they are more strongly attached to the constitution than others ; and though the constitution which they so ardently admire provides expressly for its own amendment. Gentlemen liked the constitution, but they disliked all amendment, forgetting that as long as human society exists, it must be subject to human frailties ; nothing that comes from the head of man can be perfect ; and though we may fail to correct imperfections in human institutions, it is our duty to persevere and employ every means which time and experience point out to us, to render our state as secure from evil as possible.

Why is it that gentlemen constantly refer us to France — do gentlemen by referring us to that unfortunate country, expect to impress a belief on us that there is any resemblance of situation or circumstances between the two countries ; or are they so blind as not to see that the state of liberty in that country should be a most earnest motive with us to provide such amendments to our constitution as may secure us against the danger of usurpation. Our situation has never resembled that of France,

but during our revolution. That nation had not the opportunity of sitting down after the overthrow of her enemies, and forming a free constitution in peace, as we had. It was in the conflicts of faction excited by foreign enemies, that the state of France was changed; but she had been always different from us. France was always one and indivisible. In that country we have seen the conflicts of faction, and the frantic zeal of adherents convulsing the nation; have we not had any similar transactions during our own revolution? Were there no factions even in our revolutionary councils? Have we had no ambitious men since seeking to destroy our liberties? Are there none now who would, if they could hope for success, attempt it? Thanks to our better fortune, tho' we have encountered many a storm, and though bad pilots had nearly foundered us, the vessel of state is still safe, and her liberties are not gone by the board. Thanks to the sound sense of the people, unbounded thanks to the able pilot who now holds the helm, we have escaped a wreck, and are now more prosperous and happy than at any former period. The exalted character who is now at the head of affairs defies the shallow railings and little minded attacks of his enemies; his character stands too high above their reach to be affected by the insects that crawl beneath him; his conduct is above their censure, and his good deeds have rendered him dear to his fellow citizens. His countrymen had fixed their eyes upon him, but arts had been employed to frustrate their wishes. The effect, however, had been fortunate; and if it had not been for accidental circumstances, there never would have been room for the alarming contest which took place in the house of representatives. He had the best reason to know, that it never was intended to make any other man president. He was at that period at the head of the government of Georgia, and happened to be present when a letter was received, directed to some of the electors, the contents of which were communicated to him. The electors of Georgia had determined to give two of their votes to Governor Clinton. The letter was from an influential gentleman in South Carolina, pressing them to give all their votes equal, as it was alleged that if they were not given a character not acceptable to the people would be vice president. It was therefore to secure for Mr. Burr the vice presidency that those two votes were given, which would not have been given if

the least suspicion had been entertained of what subsequently happened.

But it is asserted that there may be a coalition of the large states, and thus this amendment is intended to depress the small states. These things gentlemen said only because they could say nothing to the purpose. Will any gentleman say that Massachusetts and Virginia have united. Look to their representatives\* and ask them if such is the case. Will those states be ever likely to coalesce in party views? never—there is one point only upon which they could be united—the defence of common country. Tear a leaf from the constitution and they will rally together and the small states will cling around them.

But why is this jealousy of Virginia excited—when and where has she domineered over her sister states—she is as incapable of the attempt as of submission to an insulting and insidious domination. From whence do you derive your constitution? From Virginia. When your small states refused to submit to a paltry 5 percent. impost on foreign goods—what was then your situation? Who stood forward? Virginia; she saw the situation of their common country, she saw the glories of the revolution and the liberties of the people endangered by the blind and selfish policy of the small states; and she with her accustomed sagacity found out the remedy, by proposing a convention—in which your constitution originated.

To whom are you indebted for the revolution! To the brave state of Massachusetts, the gratitude of America is due for her valour, her constancy, and her sufferings. But it is to Virginia you owe the instructive spirit and the manful determination of the first resolve, and first determination to be free, sovereign, and independent.—Why then is this jealousy attempted? Is it because she had given us Washington in our revolution, and Jefferson now? Is it to the superiority of her patriots and statesmen we must attribute this unworthy envy?

It had been asked why we do not resort to a convention, if we wish to amend the constitution. For his part he was averse to calling conventions, but when no other remedy was provided; bodies of that description are invested with boundless power; the physical and politi-

\* Messrs. Adams and Pickering

cal powers of the state are in their hands ; and they are therefore more exposed to the zeal and the intrigues of the ardent and ambitious. The constitution has provided means more simple, and fully adequate ; and even though we might err in our determinations, the check of three fourths of the legislatures will be an adequate protection against the invasion of the public rights.

We are told we shall give up every thing if we pass this amendment ; shall we really have more or less power than before—or has there been any coalition which is under an apprehension of *losing every thing* by its passage ?

We are told that the candidates on a former occasion had an equal claim and equal pretensions to the office of president. He did not wish to make comparisons ; but he could not but recollect that the attempt to supersede one of the candidates and to place the other in his station had endangered the government ; and from what he had already said, he believed it would not be questioned, that so far as concerned Georgia, it never was intended to give them an equal chance ; and small and obscure as that *little corner* called Georgia is, had the measure been pursued to consummation which had been attempted on that occasion, she would have flown to arms, and South Carolina would have joined her to do justice to the interest of the nation.

The gentleman from Delaware (Mr. White) had talked of intrigues. The days of intrigue are past, they are gone, and the intriguers with them ; the people have got the man of their choice ; Mr. Jefferson has no occasion for intrigue were he disposed to employ it ; the administration has none ; the policy of the executive is above all intrigues ; the affections of the people are his, and justly for under his administration they are the happiest people that ever existed. Never will there be a federal president or vice president again elected to the end of time ; if there should ever be any other chosen out of the line of the present politics, it must be from some new sect, which assuming the principles of the republicans may succeed by carrying their zeal for liberty farther.

He did not wish to discuss largely the allusion of the gentleman to a fifth wheel. Were the subject to be confined to our own country he should go fully into that subject—he wished not to afford any handle for the dis-

respect of foreign nations towards any part of our institutions. But he would spurn the insinuations of those who would suggest that we shall not choose a man of integrity for the office of vice-president. The people, sir, will solicit a man worthy of their confidence, and honored abroad and at home.

The amendment to the constitution he considered necessary and salutary ; and he was in hopes when gentlemen saw the benefits they would come forward and thank us for it.

MR. TRACY hoped the senate would now adjourn ;— on the question being put, it was lost.

The motion of Mr. Tracy for an adjournment, having been negatived, he then addressed the president.—

\* MR. TRACY—moved an adjournment, because he thought a more full and fair discussion was due to this important question, than could be had after this late hour.

The merits have never, until now, been before us, for although considerable time has been consumed in debate, it has chiefly been directed to the subordinate amendments, and not to the main resolution. But since the senate have refused to adjourn, I will now offer some observations on the merits, in doing which, I will study brevity, as much as the importance of the subject will permit.

I shall attempt to prove, sir, that the resolution before us, contains principles which have a manifest tendency to deprive the small states of an important right, secured to them by a solemn and constitutional compact, and to vest an overwhelming power in the great states. And, further, I shall attempt to show, that in many other points the resolution is objectionable, and for a variety of causes, ought not to be adopted.

As I shall be obliged in delineating the main features of this resolution to mention the great states in the union as objects of jealousy, I wish it to be understood, that no special stigma is intended. “ *Man is man,*” was the

\* The editor thinks it due to himself, that this speech was not reported by him, but copied from a printed pamphlet. He has preferred giving this report to that from his own notes, because it might be considered as an indication of apprehension that it might have greater weight than the original ; and as it is but reasonable that the public should know *all that can be said on the subject*. Without this explanation many who heard the debate might think the reporter had taken too great liberties with the speech.

maxim expressed in an early part of this debate, by the gentleman from South Carolina, (Mr. Butler) and in application to the subject of government, the maxim is worthy to be written in letters of gold. Yes, sir, "*man is man*," and the melancholy truth that he is always imperfect and frequently wicked, induces us to fear his power, and guard against his rapacity, by the establishment and preservation of laws, and well regulated constitutions of government. Man, when connected with very many of his fellow men, in a great state, derives power from the circumstance of this numerous combination ; and from every circumstance which clothes him with additional power, he will generally derive some additional force to his passions.

Having premised this, I shall not deem it requisite to make any apology when I attempt to excite the attention, the vigilance, and even the jealousy of the small, in reference to the conduct of the great states. The caution is meant to apply against the imperfections and passions of man, *generally*, and not against any state, or description of men, *particularly*.

It may be proper in this place to explain my meaning when I make use of the words small and great as applicable to states.

Massachusetts has been usually called a great state ; but in respect to all the operations of this resolution, she must, I think, be ranked among the small states. The district of Maine is increasing rapidly, and must, in the nature of things, soon become a state. To which event, its location, being divided from what was the ancient colony of Massachusetts, by the intervention of New Hampshire, will very much contribute. I believe there is a legislative provision of some years standing, authorising a division at the option of Maine. When this event shall occur, Massachusetts, although in comparison with Connecticut and Rhode Island, will not be a small state ; yet in comparison with many others, must be so considered. I think myself justifiable then, for my present purposes, in calling Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, Vermont, New Jersey, Delaware, Maryland and South Carolina, small states. They are limited in point of territory, and cannot reasonably expect any great increase of population for many years, not indeed until the other states shall become so populous as to discourage emigration, with

agricultural views ; which may retain the population of the small states as seamen or manufacturers. This event, if it ever arrives, must be distant. A possible exception only, may exist in favor of Maine ; but when we consider its climate, and a variety of other circumstances, it is believed to form no solid exception to this statement.

By the same rule of deciding, the residue of the states must be called great ; for although Georgia and several others are not sufficiently populous, at this time, to be considered relatively great states ; yet their prospect of increase, with other circumstances, fairly bring them within the description, in respect to the operation of the measure now under consideration.

It will be recollected that in the various turns which this debate has taken, gentlemen have repeatedly said that the constitution was formed for the people, that the good of the whole was its object, that nothing was discernible in it like a contest of states, nothing like jealousy of small states against the great ; and although such distinctions and jealousies might have existed under the first confederation ; yet they could have no existence under the last. And one gentleman (Mr. Smith of Maryland) has said that he has been a member of this government ten years, and has heard nothing of great and small states, as in the least affecting the operations of government, or the feelings of those who administered it.

Propriety, therefore, requires that we attentively examine the constitution itself, not only to obtain correct ideas upon these observations, so repeatedly urged ; but to place in the proper light the operations and effects of the resolution in debate.

If we attend to the constitution, we shall immediately find evident marks of concession and compromise, and that the parties to these concessions were the great and small states. And the members of the convention who formed the instrument have, in private information and public communications, united in the declaration, that the constitution was the result of concession and compromise between the great and small states. In this examination of the constitution it will be impossible to keep out of view our political relations under the first confederation. We primarily united upon the footing of complete state equality, each state had one, and no state had more than one vote in the federal council or congress.—

With such a confederation we successfully waged war, and became an independent nation. When we were relieved from the pressure of war, that confederation, both in structure and power, was found inadequate to the purposes for which it was established. Under these circumstances, the states, by their convention entered into a new agreement upon principles better adapted to promote their mutual security and happiness. But this last agreement or constitution, under which we are now united, was manifestly carved out of the first confederation. The small states adhered tenaciously to the principles of state equality ; and gave up only a part of this federative principle, complete state equality, and that, with evident caution and reluctance. To this federative principle they were attached by habit ; and their attachment was sanctioned and corroborated by the example of most if not all the ancient and the modern confederacies. And when the great states claimed a weight in the councils of the nation proportionate to their numbers and wealth, the novelty of the claim, as well as its obvious tendency to reduce the sovereignty of the small states, must have produced serious obstacles to its admission. Hence it is, that we find in the constitution but one entire departure from the federal principle. The house of representatives is established upon the popular principle and given to numbers and wealth, or to the great states, which in this view of the subject are synonymous. It was thought by the convention, that a consolidation of the states into one simple republic, would be improper. And the local feelings and jealousies of all, but more especially of the small states, rendered a consolidation impracticable.

The senate, who have the power of a legislative check upon the house of representatives, and many other extensive and important powers, is preserved as an entire federative feature of government as it was enjoyed, by the small states, under the first confederacy.

In the article which obliges the electors of president to vote for one person not an inhabitant of the same state with themselves, is discovered state jealousy. In the majorities required for many purposes by the constitution ; although there were other motives for the regulations ; yet the jealousy of the small states is clearly discernible. Indeed, sir, if we peruse the constitution with attention, we shall find the small states are

perpetually guarding the federative principle, that is, state equality. And this, in every part of it, except in the choice of the house of representatives, and in their ordinary legislative proceedings. They go so far as to prohibit any amendment which may affect the equality of states in the senate.

This is guarding against almost an impossibility; because the senators of small states must be criminally remiss in their attendance, and the legislatures extremely off their guard, if they permit such alterations, which aim at their own existence. But lest some accident, some unaccountable blindness or perfidy should put in jeopardy the federative principle in the senate, they totally and forever prohibit all attempts at such a measure.

In the choice of president, the mutual caution and concession of the great and small states is, if possible, more conspicuous than in any other part of the constitution.

He is to be chosen by electors appointed as the state legislatures shall direct, not according to numbers entirely, but adding two electors in each state as representatives of state sovereignty. Thus Delaware obtains three votes for president, whereas she could have but one in right of numbers. Yet mixed at this mode of choice is, with both popular and federative principles;—we see the small states watching its motions and circumscribing it to one attempt only, and on failure of an electoral choice they instantly seize upon the right of a federal election, and select from the candidates a president, by states, and not by numbers. In confirmation of my assertion, that this part of the constitution was peculiarly the effect of compromise between the great and small states; permit me to quote an authority which will certainly have great weight, not only in the senate, but through the union, I mean that of the present secretary of state (Mr. Madison) who was a leading member of the federal convention who formed, and of the Virginia convention who adopted the constitution.—In the debates of the Virginia convention, vol. 3, page 77 he says, (speaking of the mode of electing the president,) “as to the eventual voting by states it has my approbation. The lesser states and some larger states will be generally pleased by that mode. The deputies from the *small states* argued, and there is some force in their rea-

soning, that when the people voted, the large states evidently had the advantage over the rest, and without varying the mode, the interests of the little states might be neglected or sacrificed. Here is a compromise.—For in the eventual election, the small states will have the advantage."

After this view of the constitution, let us enquire, what is the direct object of the proposed alteration in the choice of president ?

To render more practicable and certain the choice by electors :—and for this reason ; that the people at large, or in other words, that the great states, ought to have more weight and influence in the choice. That it should be brought nearer to the popular and carried further from the federative principle. This claim we find was made at the formation of the constitution.—The great states naturally wished for a popular choice of first magistrate : This mode was sanctioned by the example of many of the states in the choice of governor. The small states claimed a choice on the federative principle, by the legislatures, and to vote by states ; analogies and examples were not wanting to sanction this mode of election. A consideration of the weight and influence of a president of this union, must have multiplied the difficulties of agreeing upon the mode of choice. But, as I have before said, by mutual concession, they agreed upon the present mode, combining both principles and dividing between the two parties, thus mutually jealous, as they could, this important privilege of electing a chief magistrate.

This mode then became established, and the right of the small states to elect upon the federative principle, or by states, in case of contingency of electoral failure of choice, cannot with reason and fairness be taken from them, without their consent, and on a full understanding of its operation ; since it was meant to be secured to them by the constitution, and was one of the terms upon which they became members of the present confederacy ; and for which privilege they gave an equivalent to the great states, in sacrificing so much of the federative principle, or state equality.

The constitution is nicely balanced, with the federative and popular principles ; the senate are the guardians of the former and the house of representatives of the latter ; and any attempts to destroy this balance, under

whatever specious names or pretences they may be presented, should be watched with a jealous eye. Perhaps a fair definition of the constitutional power of amending is, that you may upon experiment so modify the constitution in its practice and operation, as to give it, upon its own principles, a more complete effect.— But this is an attack upon a fundamental principle established after a long deliberation, and by mutual concession, a principle of essential importance to the instrument itself, and an attempt to arrest from the small states, a vested right ; and, by it, to increase the power and influence of the large states. I shall not pretend, sir, that the parties to this constitutional compact, cannot alter its original essential principles ; and that such alterations may not be effected under the name of amendment ; but, let a proposal of that kind come forward in its own proper and undisguised shape ; let it be fairly stated to congress, to the state legislatures, to the people at large that the intention is to change an important federative feature in the constitution, which change in itself and all its consequences, will tend to a consolidation of this union, into a simple republic ; let it be fairly stated, that the small states have too much agency in the important article of electing a chief magistrate ; and that the great states claim the choice ; and we shall then have a fair decision. If the senators of the small states, and if their states legislatures will then quietly part with the right they have, no person can reasonably complain.

Nothing can be more obvious, than the intention of the plan adopted by our constitution for choosing a president. The electors are to nominate two persons, of whom they cannot know which will be president ; this circumstance not only induces them to select both from the best men ; but gives a direct advantage into the hands of the small states even in the electoral choice. For they can always select from the two candidates set up by the electors of large states, by throwing their votes upon their favorite ; and of course giving him a majority ; or, if the electors of the large states should, to prevent this effect, scatter their votes, for one candidate, then the electors of the small states would have it in their power to elect a vice president. So that in any event, the small states, will have a considerable agency in the election. But if the discriminating or designating principle is carried, as contained in this resolution, the whole, or nearly the whole right and agency of the small states, in the electoral choice of chief magistrate, is destroyed, and their

chance of obtaining a federative choice by states if not destroyed, is very much diminished.

For this identical purpose is the principle of electoral discrimination and designation, introduced into the resolution before you; for the same purpose is the number of candidates reduced from five to three, from whom the house of representatives may elect, in case of electoral failure of choice; that is, to destroy, or diminish the agency of the small states, in the choice of president.

For what purpose else, are we perpetually told, and from all parts of the senate, that the *public will* is opposed, by the present mode, and the *public will* cannot be gratified, without the introduction of the discriminating principle?

By the *public will* thus mentioned, the gentlemen mean the will of a popular majority, or, the will of the great states, which in this case, I repeat it, are the same. How is it possible for the gentlemen to increase the chances of gratifying this description of the *public will*; without decreasing the agency of the small states?

The whole power of election is now vested in the two parties; numbers and states, or, great and small states, and it is demonstration itself, that if you increase the power of the one, in just such proportion you diminish that of the other. Do the gentlemen suppose that the *public will*, when constitutionally expressed by a majority of states, in pursuance of the federative principle of our government, is of less validity, or less binding upon the community at large, than the *public will* expressed by a popular majority? The framers of your constitution, the people who adopted it, meant, that the *public will*, in the choice of a president, should be expressed by electors, if they could agree, and if not, that the *public will* should be expressed, by a majority of the states, acting in their federative capacity, and that in both cases the expression of the *public will* should be equally binding.

It is pretended that the *public will* can never, properly or constitutionally, be expressed, but by a majority of numbers, of the people, or of the house of representatives? This may be a pleasing doctrine enough to great states; but it is certainly incorrect. Our constitution has given the expression of the public will, in a variety of instances, other than that of the choice of president, into very different hands from either the house of representatives or the people at large. The president and senate, and in many cases the president alone, can ex-

press the *public will*, in appointments of high trust and responsibility, and it cannot be forgotten that the president sometimes expresses the *public will*, by removals. Treaties, highly important expressions of the *public will*, are made by the president and senate ; and they are the supreme law of the land. In the several states, many great offices are filled, and even the chief magistracy by various modes of election. The public will is sometimes expressed by pluralities, instead of majorities, sometimes by both branches of the legislatures; and sometimes by one, and in certain contingencies, elections are settled by lot. The people have adopted constitutions containing such regulations, and experience has proved that they are well calculated to preserve their liberties and promote their happiness. From what good, or even pardonable motive then, can it be urged, that the present mode of electing our president, has a tendency to counteract the *public will*? Do gentlemen intend to destroy every federal feature in this constitution ?

And is this resolution a precursor to a complete consolidation of the union, and to the establishment of a simple republic?—Or will it suffice to break down every federative feature which secures to one portion of the union, to the small states, their rights?

I am not without my fears, Mr. president, that this is but the beginning of evils, and that this constitution, the bulwark of the feeble members of the confederacy ; the protection of the weak against the strong ; the security of the small against the great ; the last, best hope of man, with a view to stability in a free government, and to the preservation of liberty in a republic ; is destined to undergo changes, and suffer innovations, till there be no residue worth preserving, and nothing left, which ambition will condescend to overturn.

Time will not permit me to dwell any longer on this part of my argument. But I am deceived, sir, if the view I have now taken of the constitution does not shew most obviously, that in its formation there was a struggle between the great and small states, with respect to many of its principles and leading features. And that the participation in the election of a chief magistrate, clearly secured to them by the constitution, will receive a deadly blow by the adoption of the proposed amendment.

It can be no contradiction to my ideas upon the subject, if we have heard nothing of state conflicts, in the administration of this government. The great states have never, till now, directly attempted to violate the sanctuary of the small, and despoil them of their rights; had this been earlier attempted, we should have heard and seen the same jealousy awakened, and the same opposition exerted.

The conflict could happen in no other way, than by an attack from the large states. We had neither the desire nor ability to injure them, and we now ask no favors, but their permission to enjoy, in peace and safety, the rights conceded to us by themselves, and secured by a solemn constitutional compact.

We have been told by a gentleman from Virginia, that it would be impolitic in us to rouse the great states. I shall, at present, take no further notice of this warning, given to us, no doubt, in the full exercise of benevolence; but to request the small states to preserve it in constant recollection. It may induce them not hastily to part with constitutional security.

There are some other points of light, in which I wish to place the subject before us.

The constitution is of recent date; it was formed by the mutual concessions of conflicting parties, and balanced with a view to the securing of all. Experience, alone can test its utility, and time and practice discover its faults. It is a sound position that you should never attempt an alteration in an instrument so complicated, and calculated to serve so many various and opposite interests, without being able, by the test of experiment, to discern clearly the necessity of alteration, and without a moral certainty, that the change shall not only remove an existing evil, but that it shall not produce any itself. The article in the constitution establishing the mode of electing a chief magistrate; and which is now proposed to be altered, was undoubtedly one of the most difficult parts of the whole, at its formation. I am convinced, sir, that the public mind is not sufficiently impressed with the difficulty of adopting, not only an unexceptionable, but even a tolerable and practicable mode of electing a chief magistrate; possessing such important and extensive powers, as are constitutionally vested in the president of the United States. An attempt to detail the number and magnitude of his powers, to this

senate, would be impertinent : But it must and will be acknowledged by all, that the president is vested with powers vastly extensive and important, and that he will bring with him into the government more or less of state politics and state prejudices, and these facts, to which may be added the probability that he will be taken from a large state, must have increased the difficulties of the convention, in fixing on a mode of choice.

How often have contests, wars and bloodshed, the destruction of confederacies, of liberty and of vast portions of the human race, arisen from the election of chief magistrates ? When we consider that the powers vested in the president of this union, are sufficiently important to excite the avarice and ambition of the human heart, its two most active principles, to gain possession of the office ; when we consider the difference of sentiment, habit and interest in this country ; state pride and state jealousy, which could never be laid asleep ; the difficulties of fixing upon a proper mode of election, must be also infinitely multiplied. And yet this article is now selected for alteration. All the amendments which have been hitherto adopted, went to some general explanation upon very general principles, not changing but rather expounding the constitution.

This, as I have before said, is taking up the most difficult and most important article in the constitution, both in relation to rights and principles. But it is said that experience has shewn us the necessity of an alteration in this article ; that an evil has been found in practice to grow out of the constitutional provision, which calls imperiously for remedy.

At the last election of president two persons had an equal number of votes, and that number was a majority of the votes of all the electors appointed, which circumstance gave the house of representatives a constitutional right to select one of them for president. In exercising this constitutional right, they voted by states, and there was at first a division, no choice being made until the sixth day ; when an election was effected, of the very man whom the great states, and the advocates of this resolution, wished.

It ought to be noted here, that although they voted by states, yet it happened, in this division, that a majority, in point of numbers, voted for the person president, who eventually became vice president. As to intrigue, by

either of the candidates, or by their friends, I know of none; the sentiments and conduct of the vice president, as published, were perfectly fair and honorable, containing a declaration of his wishes not to stand in the way of the other candidate.

After the view of the constitution which we have taken, and comparing this fact, or set of facts, with the provisions for electing a president, we shall really be at a loss to find out the mighty evil, which the experience of this election has discovered, and which is said to call so imperiously for a remedy. But the advocates of this resolution have had the goodness to put their finger on the spot. They say, that in the certificates of the electors, Mr. Jefferson's name stood first; this is called a sort of record testimony, and in addition, some, if not all the electors said they meant to elect Mr. Jefferson president and Mr. Burr V. President; and this is declared to be the *public will*, expressed by the constitutional organ, the electors. Notwithstanding this expression of the *public will*, say the gentlemen, a large portion of the house of representatives withheld and opposed the *public will*, for the space of six days, and wilfully voted for the man to be president, who, they knew by the evidence just mentioned, was meant to be vice president. One gentleman (Mr. Wright) has said, that if he had been a member of that house, possessing such sentiments upon the subject, as he now does; such voting would in him have amounted to the crime of perjury, or words to the same effect; I mean to quote his ideas, as expressed, and believe I have given nearly his very words.

And it is added, that thus there was imminent danger of a person being imposed upon the United States as chief magistrate, who was not originally intended for that high office, and that *civil war must have been the consequence*. And, as is common in such cases, the picture is filled: in the back ground, with brother raising his murderous hand against brother, father against son, and with an afflicting group of *et ceteras*: and to avoid a repetition of this *tremendous crisis*, as it is called, the present resolution, it is said, must pass.

Let this statement of facts be kept in view, while we examine the duties assigned by the constitution to the several agents concerned. The duty of the electors is precisely defined. They are each to bring forward two candidates fully qualified for president, because they cannot

know at the time of giving their ballots upon which the choice will fall. The circumstance of two having a majority, and both being equal in number of votes, is an expression of the *public will*, through the only constitutional organ, by which, in this case, the *public will* can be expressed, that both had the requisite qualifications. The public will, then, was in this instance clearly and unequivocally expressed, by a constitutional and numerous majority, that both candidates were worthy of the office; but here the expression of the public will ceased, and which of these two should be president, was now to be decided by another constitutional organ that is, by the house of representatives voting by states.

The framers of the constitution so intended, and the people who adopted it have so ordained, that *their will* in this case should be expressed by a majority of the states, acting by their representation in the house of representatives. The right of selection, is a right complete in itself, to be exercised by these second electors; uninfluenced by any extraneous consideration, and governed only by their own sense of propriety and rectitude. The opinion of the people had been expressed, by the electors, but it only reached a certain point, and then was totally silent as to which of the two should be president, and their sense upon this point could only be collected, through their constitutional organ, the house of representatives voting by states. Any interference of the first electors, or of an individual or individuals, must be informal and improper. The advice of sensible and candid men, as in every other case, might be useful; but could have no binding force whatever. The first electors had no right to choose a vice president. To claim it was overstepping their duty, and arrogating to themselves a power, not given to them by the constitution.

If there is any thing in this whole transaction, which has the most distant appearance of a breach of duty, it was in the electors, by attempting to designate, and by exercising the important office of an elector, under the influence of improper motives; that is, by officiously attempting to decide the question, which of the two persons was proper for vice president, which they were constitutionally incompetent to decide. By this conduct they attempted to break down an important guard provided by the constitution, and improperly to release themselves from its obligations, which made it their

duty to select two men qualified to be president. But if there can be a shadow of reason in this claim of the electors to designate under the present constitutional regulations, of which, to doubt, seems to be so heinous, what necessity can there be for this amendment? The object of the amendment, or certainly its chief object, is to establish the designating principle; but why this, if it can already be effected by the simple mode of placing one name first on the ballot, which is so easy to be done, that it can scarcely be avoided? And if done, by the doctrine of gentlemen, it is so far binding on the house of representatives that if they even doubt, they are damned?

The fact certainly was, that at the last election, the great states brought forward the two candidates; they were both of the same political sentiments; this, they had a constitutional right to do; but it now seems that their language to the small states was; "because you will not give up your constitutional rights to us, and let us go on and designate, we will stir up a civil war, and lay the blame to you. And of this improper conduct of ours we will take the advantage, and obtain an alteration of the constitution, which will hereafter gratify us in every respect." A gentleman from Maryland (Mr. Smith,) had said, that he heard, though he could not prove it, that the federal majority at the time of the last election, contemplated making a law, authorizing or appointing some person as president, in case no choice had been made by the house of representatives. I was then, sir, a member of the government, and know nothing of such a project, it might have been so, but supposing it was, what then? Why says the gentleman, the person thus appointed could not have kept his head on his shoulders 24 hours; and this would have made a civil war. If the majority now should contemplate a measure, which the constitution does not authorise, as it clearly did not authorise the measure suspected by the gentleman, though he cannot prove it; the best thing in the world for them to do, would be to give it up, without any attempt to effect it, as it seems the federal majority did. But what argument all this can afford in favor of the amendment, or why it was mentioned, in this debate, is beyond my comprehension. In the result of the last election, the great states and the ruling political party, were certainly gratified, and there does not appear the least reason-

able ground of complaint against the small states, in the use of their constitutional rights on the occasion. All support therefore to the amendment, drawn from that transaction, must fail.

I have said, that the article fixing the mode of electing a chief magistrate was, from its nature, attended with many difficulties. A more strict enquiry into the constitutional mode, and a comparison of it, in some other and more particular points, with the proposed alteration, will be useful in forming an opinion of their relative merits.

As the constitution stands, each elector is to write the names of two persons on a piece of paper, called a ballot. Either of the two persons thus voted for may be president, and the elector cannot know which: this affords the most powerful inducement to vote for two, both of whom are qualified for the very important office. For it is not only uncertain upon whom the choice will fall at first, but the one remaining will certainly be president, upon any contingency which shall remove or incapacitate the first. The convention seem to have selected a mode of proceeding the most simple, the least liable to accident and the best calculated to insure the main object, that is, that both should be really worthy of the trust. If one candidate wishes to make interest with the electors, as each must vote for two, it will be impossible for bribery or intrigue to succeed; for, without corrupting the whole or certainly many more than half, he may be defeated by the other candidate on the ballot. This is, perhaps, the most effectual bar to intrigue, that was ever contrived; for, unless all, or a great proportion of the electors are corrupted, an extreme case of depravity not probable in any country, intrigue can have no assurance of success. The danger and difficulty, which must always attend such an important election, as that of chief magistrate of the United States, was meant to be avoided, by diminishing the chances of its frequent recurrence. So two persons are placed in condition to act as president in succession, to prevent both the evils, of vacancy, and a recurrence of choice more frequently than once in four years. And it seems merely incidental to this second person, to be called vice president, and neither the first nor second description of electors can have any right to vote for him as such, indeed he can have no existence till the first character is designated and then seems to be

discovered, not elected. The senate, in case of an equal number of votes for two or more remaining persons, after the president is elected, are vested with authority to choose a vice president, for as such he is to preside over this body, and this body therefore seems to be the only constitutional organ to designate him. Both the other descriptions of electors have nothing to do with such a character or office ; but are confined to act with a single reference to the character and office of president ; and are trusted with no power to give any opinion of the character or qualifications of a vice president. And it is remarkable, that there are no appropriate qualifications made necessary by the constitution, for a vice president ; but every qualification has reference to president. There is another important feature in this part of the constitution. It was known by the convention, that in this country, in common with all others, where there is freedom of opinion and of speech, there would be parties. They likewise knew, that the intolerance of the major, or ruling sect and political party, was frequently exercised upon the minor party ; and that the rights of the minority ought to be protected to them.

As well then, to secure the rights of the minority, as to check the intolerance of the majority, they placed the majority in jeopardy, if they should attempt at grasping all the benefits of a president and vice president within themselves, to the total exclusion of the minority. This very case which happened at the last election was contemplated, in which the majority attempted totally to exclude the minority from any participation. The language of the constitution to such majorities is, " take care that you aim not at too much, for if you do, it is put into the power of the minority to check you, and by a judicious disposition of their few votes, determine the choice of president." To avoid this event the majority will probably be cautious in the exercise of power ; and thus the rights, the proper weight and influence of a minority are secured against the conduct of the majority, which is certainly liable to be intolerant and oppressive. In this respect the spirit of the constitution is, political moderation. And it is clear to my mind, that the experience of the last election has taught a lesson to all majorities, which will in future completely secure them from again incurring a similar risk. I recollect well, that it was thought probable, when the electoral

votes were given, that Mr. Burr would have a vote or two, in some of the eastern states. If he had received but one, he would have been by an electoral choice, the constitutional president. If the majority in future have powers of recollection, they will undoubtedly avoid the evil, if it is one, which happened at the last election, with such unfailing certainty, that there will be no need of the remedy proposed by the amendment. But the majority say, if their votes are so scattered for one candidate as to avoid this danger, that another will be incurred; and that is, the minority will elect a vice president. The language of the constitution to them, is again, "that this was meant as a security for the minority against the majority." But the majority exclaim against both these provisions, as very unreasonable indeed: "what," say they, "are minorities to govern majorities?" The answer of the constitution is "no, but their due weight and influence shall be secured to them, and the danger of your intolerance guarded against."— For the security of small states and minorities, there is, in the constitution a mixture of the federative with the popular principles. And as it is well known that, when popular majorities alone prevail, and exercise power uncontrolled by constitutional checks, the minorities, who generally possess their proportion of integrity and virtue, are overwhelmed, and liberty itself, by the same means, destroyed; so it is in kindness to both parties, to the country and to humanity, that these wholesome checks are constitutionally provided. Had the majority or the great states, been willing, fairly to have submitted to the constitutional checks in the last election, no evil could have happened. And it is remarkable that the constitution completely protects them, as long as they obey its precepts, in the creation of which they had an agency, and to which they have solemnly agreed. To prove that I am correct in these ideas, I not only refer to the constitution but to the secretary of state (Mr. Madison.) In the Virginia debates, volume 1. page 96, he says, "But on a candid examination of history, we shall find that turbulence, violence and abuse of power by the *majority trampling on the rights of the minority*, have produced factions and commotions which, in republics, have more frequently than any other cause produced despotism. If we go over the whole history of ancient and modern republics, we shall find their destructions

to have generally resulted from those causes. If we consider the peculiar situation of the United States, and what are the resources of that diversity of sentiments which pervades its inhabitants, we shall find great danger that the same causes may terminate here, in the same fatal effects, which they produced in those republics. This danger ought to be wisely guarded against : Perhaps, in the progress of this discussion it will appear that the only possible remedy for those evils, and means of preserving and protecting the principles of republicanism, will be found in that very system, which is now ex-claimed against as the parent of oppression."

Mr. President, it has often been said by the discerning and judicious of this and other countries, that our constitution, for its brevity, its comprehensiveness, its perspicuity, and the political skill contained in it, was the best state paper extant. I believe all this and even more is a tribute justly due to its merits ; and I am persuaded that the article which fixes a mode for the choice of a chief magistrate, stands most prominent among its excellencies.

Let us now, sir, examine and compare the merits of the amendment with a special reference to this last view we have taken of the constitutional provision.

The amendment authorises the electors to vote for a president, and for a vice president by specific designation. Is ambition in your country ? Here is a direct and inviting object for its operation.

Is the integrity of your electors assailable ? You place it here in the most encouraging attitude for an assault.—A fear of detection, and a sense of shame, upon the exposure of an improper action, has been perhaps, a better security against political errors or crimes, than all the moral virtues united, when the temptation has been attended with an impossibility of detection. An intrigue with an elector, can be carried on without much danger of detection ; but when your election is carried into the house of representatives, besides the ordinary weight of character in favor of the members of that house a detection of an intrigue with a candidate is almost certain. It will be recollected, that at the last election, two or three members held the choice perfectly in their own hands. If I mistake not, three gentlemen, that is, a member from New Jersey, a member from Vermont, and one from either Maryland, Delaware, or Tennessee, could have

given a president to the United States. The particular gentlemen mentioned were above suspicion of bribery; but in addition to this circumstance, if they had in the contest, gone over from improper motives, or under the influence of bribery, a detection was certain.

This will remain forever, the criterion, as it respects the relative danger of intrigue and bribery, in the two modes of choice. And the amendment is avowedly intended to secure a choice by electors, and to prevent a resort to the house; because says the gentleman from Virginia, (Mr. Taylor,) "If you permit the election to go into the house, there, are small states, and minorities, and all the evils of a diet election;" meaning, that corruption must be the consequence. But he says, "let there be a divided election, by the electors, meeting by states separately, and you lessen the tendency to corruption." This may look plausible in theory, but I think practice will shew its fallacy.

It may be better for the electors to meet by states, than for all to be together, but this can never prove that they are less liable to corruption than the house of representatives; which is the only point in question.

The manner of electing the vice president, as proposed by the amendment, not only invites ambition to an unchecked operation; but exposes us to the selection of a less important, and more unfit person, than the constitutional provision. In addition to his importance in the government arising from his incidental succession to the chief magistracy, the vice president is ex-officio, President of the senate, and gives a direct influence, to the state from which he is chosen, of a third vote in this body, in all cases of equal division, which are usually the cases of most importance. Besides, his influence as presiding officer is, perhaps, more than equal to the right of a vote. It becomes therefore peculiarly important to the small states, and to minorities, whose security rests in this body, not only that their influence in the election of vice president should not be diminished; but that no measure be adopted, which may tend to bestow the office upon an unworthy character. By the proposed amendment, this character must necessarily become a sort of make-weight, and stepping-stone for the presidency.—As in recruiting for an army, a man, active, and of a particular cast of character, but not very proper for a commander in chief, is employed to obtain

recruits, and upon condition that he obtains a given number, is to be rewarded with a serjeant's warrant; so in this case, the man who can procure a given number of votes for president, will be encouraged to hope for the vice-presidency; and where will such characters be sought after? In Delaware or Rhode Island? No sir, but in the great states; there the recruiting talents will be put in operation, because the number of recruits, or votes, will be sufficient to test his active and recruiting merits. And thus the office of vice president will be sent to market, with hardly a possible chance to meet an honest purchaser.

I have already remarked upon the alteration made by the senate, in the resolution passed by the house of representatives, changing the number five to three. But one addition made this morning, deserves attention; I mean that which authorises the vice president to administer the government, in case neither the first nor the second constitutional electors effect a choice of president.

This is a new principle, and its operation is more uncertain, than that of any other part of the proposed amendment. Viewing it in one point of light, it may be thought to confer a new power upon the senate; that of giving a president to the union. And it is said, that this part will recompense the small states, who have the ascendancy in the senate, for the injury inflicted by the other parts of the amendment. If it be true, that the last part restores all which the former parts have taken away from us, it is inconceivable, why any man can wish to pass a resolution, the parts of which thus mutually destroy each other. It is possible, that by the force of intrigue and faction, the electors may be induced to scatter their votes for both president and vice president, in such manner, as to present several candidates to the house for president and two or more to the senate for vice president. In which case the senate might immediately choose or select a vice president. In this state of things, there is an opportunity afforded for an intrigue, of a very extensive and alarming nature. The senate, I mean a majority of them, might wish that the man whom they had elected vice president should administer the government and if the house could be prevented from agreeing, their wishes would be gratified. The facility of preventing over that of producing a choice is very obvious.

A bold address may be made to any member of the house, without wounding his pride, or offending his morality, to adhere to his candidate, and not change his vote so as to effect a choice. He can be told that there is no danger of leaving the United States without a president, as there is one already chosen to his hand, by the senate ; and this person may be more the object of his wishes, than any of the other candidates, his favorite excepted. In this process the senate may give a president to the United States. But if the probability of such a process and such an event is increased by the amendment of this morning, it cannot certainly greatly recommend it. For myself I wish for no alteration in the constitution, not even if its operations were directly in favor of the small states, more especially if such a favor is to be derived through a sort of double conspiracy of intrigue ; in the first place to operate on the electors, and then on the house of representatives. It seems to me, that the small states had better be contented to enjoy the rights now secured to them by the constitution, which they can *honestly* do, rather than submit to a deprivation of their rights, for the sake of *dishonestly* obtaining a restoration of them. We may charitably and safely conclude that the majority do not intend, by this part of the amendment, to expose the country to such a scene of iniquity. And the uncertainty of its operations, alone, is, in my mind, a sufficient ground for rejection. However the operation of this part of the amendment may appear in theory as to other points, it seems to me, that in one point all must agree, and that is, when the house of representatives know that the United States will be left without an executive magistrate, in case they do not agree ; this awful responsibility, will speak in a voice too loud for the hardihood of party entirely to disregard. And may not I suggest, without giving offence, that the operation of this very responsibility, has been proved at least in some degree in the proceedings of the last presidential election ?

If this last mentioned security be worth preserving, it follows of course, that the part of the amendment alluded to, ought not to pass.

There is another view of the constitution, which has a reference to the general subject before us : and that is, the caution exhibited with respect to the introduction of amendments. In an instrument so important, and con-

taining many features new, if not to the world at least to ourselves, although we might approve of its principles ; yet experience might discover errors as to the mode devised for carrying those principles into effect. Hence it was the part of wisdom and caution to provide for such alterations in practice as would give the fairest operation to principles, without incurring the confusion and agitation incidental to a general convention. But lest the daring and restive spirit of innovation should injure or destroy under the specious name of amendment, that same wisdom and caution have provided salutary checks.

*“ Two thirds of both houses of the congress shall deem it necessary”* to propose amendments ; and three fourths of the state legislatures shall ratify such amendments ; before they acquire validity. I speak now, sir, of the mode which has always been, and probably will be put in practice to obtain amendments. The other constitutional mode is equally guarded as to numbers, but, as it has no relation to the subject now in debate, may be laid aside. “ Two-thirds of both houses,” must, I think on every fair principle of construction, mean two-thirds of all the members. The number of senators is thirty-four ; two-thirds being twenty-three. And as there is no representation from New Jersey, the number of representatives is one hundred thirty-six ; two-thirds being ninety-one.

My impressions are, sir, that this amendment cannot constitutionally be proposed to the state legislatures, unless it is agreed to, in the two houses, by those numbers, twenty-three, and ninety-one, respectively. This is a constitutional point, which, I am told, has never been agitated but is certainly worthy of attention. If the construction should prevail, that two-thirds of the members present at any time, might propose amendments, the consequence is, that twelve senators, being two-thirds of a quorum, and forty-eight representatives, being a similar two-thirds, might propose any and the most important amendments. I am aware, sir, that it may be said, such propositions are not final, they may yet be ratified or rejected by the state legislatures. But the spirit of the constitution seems to require two-thirds of the nation, acting by its proper organs, to propose amendments ; and that, in so interesting a subject as a constitutional alteration, a less number should have no authority.

The letter of the constitution will certainly justify this idea of its spirit. When two-thirds of the senate are

requisite to consent and advise to a treaty, the words are “two-thirds of the senators *present*.” To convict on impeachment, “two-thrds of the members *present*.”— Yeas and nays are to be entered on the journal, “at the desire of one-fifth of those *present*.” In the two first cases it is requisite to act immediately, whether two-thirds of the whole are present or not; then we see the expressions are clear, “two-thirds” refers to the numbers *present*. Why so? Because, without these expressions, the reference would have been understood to the whole number of members. In the last case why add the word “*present*” to the one-fifth? Because, without that word, one-fifth of the whole would have been its meaning. In all other cases, when two-thirds are required, the spirit of the constitution certainly is, and the words seem to carry the meaning, “two-thirds” of the whole numbers. It is said, “that a majority of each *house* shall constitute a quorum to do business.”— *House*, in this case must mean all the members. Two-thirds of both houses must, on the same principles, mean two-thirds of all the members of both. There is, I acknowlege some obscurity, in the constitutional use of the word *house*, when either of the two branches of congress is described by it; but if the intention and sense as well as words are attended to, I am forcibly led to believe that two thirds of all the members of both houses, are required to sanction propositions for amendments, and that this construction is most consistent with the wisdom and political skill of the convention. The construction for which I contend is analogous to the caution manifest in other parts of the constitution. It was well known to the convention, that amendments, if recommended or proposed by congress, would have an imposing influence with the state legislatures; and that in no possible instance, could more evil arise from indigested measures, than in the case of amendments, owing to the impossibility of clearly foreseeing their operation and effects on the general constitutional system. It was made requisite therefore to wait for the uninfluenced movement of two thirds of the popular and federative representatives of the nation. Whatever may be our opinion on the point now discussed, the state legislatures have a constitutional right to judge of it for themselves, and to determine whether a proposition for an amendment is presented to them, with the sanction required, and, if, in

their opinions, the requisite numbers have not agreed to the proposition, they will guard the constitution, by refusing to ratify such amendment. My honorable friend from New Hampshire (Mr. Plumer) has done such ample justice to this part of the subject, as to place it out of the reach of my assistance and beyond the need of any.

I am convinced, Mr. President, that the amendment now under consideration could not, in the senate, obtain a constitutional majority, of two-thirds, or even a simple majority, were it not for the influence of instructions.— Some gentlemen have ingeniously said, that until they gave this amendment the present particular examination, they had not contemplated the extent of its probable effects, and although they entertained doubts, yet they were induced by the instructions given them, to make the proposition to the legislatures, and let them decide for themselves.

Whatever may or can be said in favor of instructions generally, cannot be applicable to this case. For the purpose of obtaining amendments to the constitution, congress can only propose, and the state legislatures ratify. The duties are appropriate and distinct, and the uninfluenced independent act of both, requisite. The legislatures cannot ratify, till a proposal is made. This subject can be elucidated and enforced by familiar examples. The house of representatives alone, can originate a bill for raising revenue, but it cannot become a law without a concurrence of the senate. Would not the advice and instruction of the senate to the house, intimating our desire that they would originate and send to us for concurrence, a revenue bill, be thought improper, indelicate and even unconstitutional? the president and senate can appoint certain officers, but they have distinct and appropriate agencies in the appointment. The president can nominate, but cannot appoint without the advice and consent of the senate.

But the senate cannot nominate, nor could their advice to the president, to make a nomination, be either binding or proper. The character of the several independent branches of our government, forming constitutional checks upon each other, cannot be exemplified more fully, than in the mode of producing amendments. And an interference of one independent body, upon the appropriate and distinct duties of another, can in no instance have a

more prejudicial effect. Can it be thought, then either proper, or constitutional for the state legislatures to assume the power of instructing to *propose* to them a measure, when the power of proposing is not only not given to them, but given exclusively to congress? As well and with as much propriety might congress make a law, attempting to bind the state legislatures to ratify; as the legislatures by instructions, bind congress to propose.— In either case the check, which for obviously wise purposes, was introduced into the constitution, is totally destroyed. And we have not as much security against improper amendments, as we should have, if the power were exclusively vested in the state legislatures, and for this obvious reason, that in this mode of operation the responsibility, for the adoption of an improper amendment, is divided and destroyed. Is the sentiment correct, sir, that we shall be justifiable in sending forth this proposition to be considered by the state legislatures, if we believe it ought not to be ratified? What would be thought of the senate, if they should pass a bill, and send it to the house of representatives for concurrence, the provisions of which they disliked entirely, and wished not to be established? And can any sound distinction be made between such a measure, and the one now before us? In either case, the single act of the other body would be final; and in either case the people at large would be safer to have but one body in existence, to legislate, or make amendments; for all our agency in both cases would only tend to deceive and mislead, and in addition, to diminish, if not destroy, as has just been observed, the responsibility of the other body.

It has been said sir, that the house of representatives have twice given a sanction to this measure, and that their conduct, in this particular, adds weight to it. I wish to treat that honourable body with the highest respect; but I must deviate from the truth, were I to acknowledge that their conduct upon this amendment, has a tendency to convince me that they have a full understanding of the subject. Twice have they sent us a resolution, similar in its leading feature to that on your table, and made no provision that the person to be vice president, should be qualified for the highly responsible office, either in age, or citizenship. And for aught that they had guarded against, we might have had a man in the chief magistracy, from Morocco, a foreigner who had not been in the country a month.

Mr. President,—it was suggested, in a former part of the debate, by a gentleman from South Carolina, (Mr. Butler,) that the great states, or ruling party of the day, had brought forward this amendment, for the purpose of preventing the choice of a federal vice president at the next election. And we are now put beyond the power of doubt, that this is, at least, one motive, by the observations of several of the majority, but especially by those of the gentleman from Virginia. He informs us, and I appreciate his frankness, that if the friends of this measure do not seize the present opportunity to pass it, the opportunity will never recur. He tells us plainly, that a minor faction ought to be discouraged, that all hopes or prospect of rising into consequence, much more of rising into office, should be crushed, and that this amendment is to produce a part of these beneficial effects ; which amendment he compares to the bill which was introduced into the British parliament, to exclude a popish successor to the crown, commonly called the exclusion bill. Have the minority then, no right left, but the right to be *trampled* upon by the majority ? This is identically the conduct, which is mentioned in the quotation which I have had the honor to make from the secretary of state ; to which I ask leave to recur. “ The majority, by *trampling* on the rights of the minority, have produced factions and commotions, which in republics, have more frequently than any other cause produced *despotism*. ”

What avails it then, that this country has triumphed over the invasion and violence of one oppressor, if they must now be victims to the violence of thousands ? Political death is denounced now ; what denunciation will follow ? It would be a useless affectation in us, to pretend to close our eyes upon either the cause or consequences of this measure.

The spirit of party has risen so high, at the present day, that it dares to attempt, what in milder times would be beyond the reach of calculation. To this overwhelming torrent every consideration must give way.

The gentleman is perfectly correct, in supposing that now is the only time to pass this resolution ; there is a tide in the affairs of party most emphatically, and unless its height is taken, its acme improved, the shallows soon appear, and the present demon of party give place to a successor. A hope is undoubtedly now indulged

that one great and dominant passion, will, like Aaron's rod, swallow up every other, and that the favorable moment can now be seized to crush the small states, and to obtain their own agency in the transaction. And when we recur to the history of former confederacies, and find the small states arrayed in conflict against each other, to fight, to suffer, and to die for the transient gratification of the great states ; have we not some reason to fear the success of this measure ?

In the senate is the security of the small states ; their feeble voice in the house of representatives is lost in the potent magic of numbers and wealth. Never until now the force of the small states, which was provided by the constitution, and lodged in this federative body, as a weapon of self-defence, been able to bear upon this question. And will the small states, instead of defending their own interest, their existence, sacrifice them to a gust of momentary passion ? to the short lived gratification of party prejudice ?

This resolution, if circumstances shall unequivocally demand it, can pass at the next or any future session of congress. But once passed, and its passage will operate like the grave ; the sacrificed rights of the small states will be gone for ever. Is it possible, sir, that any small state can submit to be a satellite in the state system, and revolve in a secondary orbit around a great state ? Act in humble devotion to her will till her purposes are gratified, and then content herself to be thrown aside like a cast garment, an object of her own unceasing regret, and fit only for the hand of scorn to point its slow and moving finger at ? Can the members of the senate who represent the small states, quietly cross their hands and request the great states to bind them fast and to draw the ligature ?

I am aware, sir, that I shall be accused of an attempt to excite the jealousy of the small states. Mr. President, I represent a small state, I feel the danger, and claim the constitutional right to sound the alarm. From the same altar on which the small states shall be imolated, will rise the smoke of sacrificed liberty : and despotism must be the dreadful successor.

It is the cause of my country and of humanity which I plead. And when one vast, overwhelming passion is in exercise, full well I know, sir, that no warning voice, no excitement but jealousy, has been found sufficiently

active and energetic in its operation to dissolve the wizard spell, and force mankind to listen to argument. Jealousy, hateful in private life, has perhaps done more in the preservation of political rights than all the virtues united.

I have made the stand, sir, in the senate, which I thought the importance of the subject demanded. If I fail here, there is hope of success with the state legislatures. If nothing can withstand the torrent there, I shall experience the satisfaction which is derived from a consciousness of having raised my feeble voice in defence of that constitution, which is not only the security of the small states, but the palladium of my country's rights ; and shall console myself with the reflection that I have done my duty.

MR. TAYLOR—The opposition to this discriminating amendment to the constitution, is condensed into a single stratagem, namely, an effort to excite the passion of jealousy in various forms. Endeavours have been made to excite geographical jealousies ; a jealousy of the smaller against the larger states ; a jealousy in the people against the idea of amending the constitution ; and even a jealousy against individual members of this house. Sir, is this passion a good medium through which to discern truth, or is it a mirror calculated to reflect error? Will it enlighten or deceive? Is it planted in good or in evil—in moral or in vicious principles? Wherefore then do gentlemen endeavour to blow it up? Is it because they distrust the strength of their arguments, that they resort to this furious and erring passion? Is it because they know that

“ .....Trifles light air, are to the jealous  
Confirmations strong as proof of holy writ.”

So far as these efforts have been directed, towards a geographical demarcation of the interests of this union into north and south, in order to excite a jealousy of one division against another ; and so far as they have been used to create suspicions of individuals, they have been either so feeble, inapplicable, or frivolous, as to bear but lightly upon the question ; and to merit but little attention. But the attempts to array states against states, because they differ in size, and to prejudice the people against the idea of amending their constitution, bear a more formidable aspect ; and ought to be repelled ; because they are founded on principles the most mischievous

ous and inimical to the constitution, and could they be successful ; are replete with great mischiefs.

Towards exciting this jealousy of smaller states against larger states, the gentleman from Connecticut (Mr. Tracy) has laboured to prove, that the federal principle of the constitution of the United States was founded in the idea of minority invested with operative power.—That in pursuance of this principle, it was contemplated and intended, that the election of a president should frequently come into the house of representatives ; and to divert it from thence by this amendment, would trench upon the federal principle of our constitution, and diminish the rights of the smaller states, bestowed by this principle upon them. This was the scope of his argument, to excite their jealousy, and is the amount also of several other arguments delivered by gentlemen on the same side of the question. He did not question the words but the ideas of gentlemen. Words, selected from their comrades, are easily asserted to misrepresent opinions ; as he had himself experienced during the discussion on the subject.

*This idea of federalism* ought to be well discussed by the smaller states, before they will suffer it to produce its *intended effect* ; that of exciting their jealousy against the larger. To him it appeared to be evidently incorrect. Two principles sustain our constitution ; one, a majority of the people ; the other, a majority of the states ; the first was necessary to preserve the liberty, or sovereignty of the people ; the last, to preserve the liberty or sovereignty of the states. But both are founded in the principle of majority ; and the effort of the constitution, is to preserve this principle in relation both to the people and the states, so that neither species of sovereignty or independence, should be able to destroy the other. Many illustrations might be adduced. That of amending the constitution will suffice. Three fourths of the states must concur in this object, because a less number or a majority of states, *might not contain a majority of people* ; therefore the constitution is not amendable by a *majority of states*, lest a species of state sovereignty, might under colour of amending the constitution, infringe the right of the people ; on the other hand, a majority of the people ; residing in the large states cannot amend the constitution, lest they should diminish or destroy the sovereignty of the small states, the fede-

ral union or federalism itself. Hence a concurrence of the states, to amend the constitution became necessary ; not because federalism was founded in the idea of minority ; but for a reason the very reverse of that idea ; that is, to cover *the will*, both of a majority of the people and a majority of states so as to preserve the great element of self government, as it regarded state sovereignty, and also as it regarded the sovereignty of the people.

For this great purpose, certain political functions are assigned to be performed, under the auspices of the state or federal principle ; and certain others, under the popular principle. It was the intention of the constitution, that these functions should be performed in conformity to its principle. If that principle is in fact a government of a minority, then these fuctions ought to be performed by a minority. When the federal principle is performing a function, according to this idea, a minority of the states ought to decide. And by the same mode of reasoning, when the popular principle is performing a function then a minority of the people ought to decide. This brings us precisely to the question of the amendment. It is the intention of the constitution, that the popular principle, shall operate in the election of a president and vice president. It is also the intention of the constitution, that the popular principle, in discharging the functions committed to it by the constitution, should operate by a majority, and not by a minority. That the majority of the people should be driven by an unforeseen state of parties, to the necessity of relinquishing their will, in the election of one or the other of these officers ; or that the principle of majority, in a function confided to the popular will, should be deprived of half its rights, and be laid under a necessity of violating its duty to preserve the other half, is not the intention of the constitution.

But the gentleman from Connecticut has leaped over all this ground, and gotten into the house of representatives, without considering the principles of the constitution, as applicable to the election of president and vice president by electors, and distinguishing them from an election by the house of representatives. And by mingling and interweaving the two modes of electing together, a considerable degree of complexity has been produced. If however, it is admitted, that in an election of a president and vice president, by electors, that the will of the electing

majority ought fairly to operate, and that an election by the will of a minority would be an abuse or corruption of the principles of the constitution, then it follows, that an amendment to avoid this abuse, both accords with, and is necessary to save these principles. In like manner, had an abuse crept into the same election, whenever it was to be made under the federal principle by the house of representatives, enabling a minority of states to carry the election, it would not have violated the intention of the constitution to have corrected this abuse also, by an amendment. For, Sir, I must suppose it to have been the intention of the constitution, that both the federal principle, and the popular principle, should operate in those functions respectively assigned to them, *perfectly* and not *imperfectly*; that is; the *former* by a majority of states, and the *latter* by a majority of the people.

Under this view of the subject, the amendment ought to be considered. Then the question will be, whether it is calculated or not, to cause the popular principle, applied by the constitution in the first instance, to operate *perfectly*, and to prevent the abuse, of an election by a minority? If it is, it corresponds with the intention, diminishes nothing of the rights of the smaller states, and of course affords them no cause of jealousy. Sir, it could never have been the intention of the constitution to produce a state of things, by which a majority of the popular principle, should be under the necessity of voting against its judgment, to secure a president; and by which a minor faction should acquire a power capable of defeating the majority in the election of a president, or of electing a vice president contrary to the will of a majority of the electing principle. To permit this abuse, would be a fraudulent mode of defeating the operation of the popular principle in this election, in order to transfer it to the federal principle; to disinherit the people, for the sake of endowing the house of representatives; whereas it was an accidental, and not an artificial disappointment in the election of a president, against which the constitution intended to provide. A fair and not an unfair attempt to elect, was previously to be made by the popular principle, before the election was to go into the house of representatives. And if the people of all the states both large and small, should by an abuse of the real design of the constitution, be bubbled out of the election of executive power, by leaving to them the *no-*

*minal right of an abortive effort*, and transferring to the house of representatives the *substantial right of a real election*, nothing will remain but to corrupt the election in that house, by some of those abuses of which elections by diets are susceptible, to bestow upon executive power an aspect, both formidable and inconsistent with the principles by which the constitution intended to mould it. The great check imposed upon executive power, was a popular mode of election; and the true object of jealousy, which ought to attract the attention of the people of every state, is any circumstance, tending to diminish or destroy that check. It was also a primary intention of the constitution, to keep executive power, independent of legislative; and although a provision was made for its election by the house of representatives in a possible case, that possible case never was intended to be converted into the active rule, so as to destroy in a degree the line of separation and independency between executive and legislative power. The controversy is not therefore between larger and smaller states, but between the people of every state, and the house of representatives. Is it better that the people—a fair majority of the popular principle—should elect executive power; or that a minor faction should be enabled to embarrass and defeat the judgment and will of this majority, and throw the election into the house of representatives. This is the question. If this amendment should enable the popular principle to elect executive power, and thus keep it separate and distinct from legislation, the intention of the constitution, the interest of the people, and the principles of our policy will be preserved; and if so, it is as I have often endeavored to prove in this debate, the interest of the smaller states themselves, that the amendment should prevail. For, sir, is an exposure of their representatives to bribery and corruption (a thing which may possibly happen at some future day, when men lose that public virtue which now governs them) an acquisition more desirable than all those great objects, best, (if not exclusively) attainable, by the election of executive power by the popular principle of the federal government, as the constitution itself meditates and prefers.

So far then the amendment strictly coincides with the constitution, and with the interests of the people of every state in the union. But suppose by some rare accident the election should still be sent into the house of repre-

sentatives ; does not the amendment then afford cause of jealousy to the smaller states ? Sir, each state has but one vote, whether it is large or small ; and the president and vice president are still to be chosen out of five persons. Such is the constitution in both respects now. To have enlarged the number of nominees, would have increased the occurrence of an election by the house of representatives ; and if as I have endeavoured to prove, it is for the interest of every state, that the election should be made by the popular principle of government and not by that house ; then it follows, that what ever would have a tendency to draw the election into that house, is against the interest of every state in the union ; and that every state in the union is interested to avoid an enlargement of the nominees, if it would have such a tendency.

Sir, the endeavor to excite a national jealousy against the idea of amending the constitution, is in my view, infinitely more dangerous and alarming, than even the attempt to marshal states against states. The gentleman from Connecticut, (Mr. Tracy) has twice pronounced with great emphasis, "*man is man*," and attempted to make inferences against all attempts to amend our constitution, from the *evil moral qualities* with which human nature is afflicted ! Sir, he has forgotten, that *governments* as well as *nations* are constituted of *men* and that if the vices of *governed man*, ought to alarm us for the safety of liberty, the vices of *governing man*, are not calculated to assuage our apprehensions. Sir, it is this latter species of depravity which has suggested to the people of America, a new idea, enforced by constitutions. Permit me, to illustrate this new idea, by the terms *political law* and *municipal law*. The former is that law, called constitutional, contrived and enacted in the United States, to controul those *evil moral qualities*, to which this creature "*man*" is liable, when invested with power ! The latter is that law enacted to controul the *vices of man* in his private capacity. If the former species of law, should be suffered to remain unchanged, the effects would be the same, as if the latter should remain unchanged. Both, unaltered, would be evaded by the ingenuity, avarice and ambition of *public man*, as well as *private man*. And therefore it is as necessary for the preservation of liberty, that constitutions or political law, should be amended from time to time, in order to

preserve liberty against the avarice and ambition of men in power, by meeting and controuling their artifices ; as it is, occasionally to amend municipal law, for the preservation of property against the vicious practices of men not in power.

To illustrate this argument, I will repeat a position which I lately advanced, namely, that the substance of a constitution may be effectually destroyed, and yet its form may remain unaltered. England illustrates it.— The government of that country took its present form in the thirteenth century ; but its aspect in substance has been extremely different at different periods, under the same form. Without taking time to mark the changes in substance, which have taken place under the form of kings, lords, and commons, it will suffice to cast our eyes upon the present state of that government. What are now its chief and substantial energies ? *Armies, debt, executive patronage, penal laws, and corporations.* These are the modern energies or substance of the English monarchy ; to the ancient English monarchy they were unknown. Of the ancient, they were substantial abuses ; for, whether these modern energies are good or bad, they overturned the ancient monarchy substantially, without altering its form. Under every change of administration, these abuses proceeded. The *outs* were clamorous for *preserving the constitution*, as they called it ; for though divorced from its administration, the hope of getting *in*, again caused them to maintain abuses, by which their avarice or ambition might be gratified upon the *next turn of the wheel* ; just as in Prussia, where divorces are common, nothing is more usual than for late husbands to affect a violent passion for a *former* wife, if she carried off from him a *good estate* ! And the *ins* fearing the national jealousy, and the prepossession against amending the form of government, and meeting new abuses by new remedies, brought no relief to the nation. So that under every change of men, abuses proceeded.

The solution of this effect exists in the species of *political craft* similar to *priest craft*. Mankind were anciently deprived of their religious liberty, by a dissemination of a fanatical zeal for some idol ; in times of ignorance, this idol was of physical structure ; and when that fraud was detected, a metaphysical idol in the shape of a tenet or dogma was substituted for it, infinitely more perni-

rious in its effects, because infinitely more difficult of detection. The same system has been pursued by political craft. It has ever labored to excite the same species of idolatory and superstition, for the same reason, namely, to conceal its own frauds and vices. Sometimes it sets up a physical, at others, a metaphysical idol, as the object of vulgar superstition. Of one, the former “*grand monarch of France*”; of the other, the present “*church and state*” tenet of England, is an evidence.— And if our constitution is to be made like the “*church and state*” tenet of England; a metaphysical political idol, which it will be *sacrilege to amend*, even for the sake of saving both that and the national liberty;—and if, like that tenet, it is to be exposed to all the means which centuries may suggest to vicious men for its *substantial destruction*; it is not hard to imagine that it also may become a monument, of the inefficacy of unalterable forms of political law, to correct avarice and ambition in the new and multifarious shapes they are forever assuming.

A constitution may allegorically be considered as a temple for the preservation of the treasure of liberty. Around it may be posted one, two or three, or more centinels; but unless these centinels are themselves watched by the people, and unless the injuries they are frequently committing upon the temple are diligently repaid, such is the nature of man in power, that the very centinels themselves have invariably broken into the temple, and *conveyed away the treasure*. And this because of the delusion inspired by political idolatry, which forbids nations to meet abuses by amending their governments or constitutions; and teaches them that municipal law alone will suffice for their happiness.

Permit me, sir, to illustrate this argument by declaring how I would proceed, if such was my design, to destroy the constitution of the United States; premising that I speak prospectively and not retrospectively. I would have recourse to those very energies which constitute the English monarchy; armies, debt, executive patronage, penal laws and corporations. I would endeavor by these monarchical energies, to produce the same effects as in England; and I would hide my intentions by exciting a fanatical adoration for the constitution, which I would endeavor to make a metaphysical idol; and which I would myself *adore—in order to destroy*. Whilst I pretended to be its devotee it should become my screen.

This sir will be the consequence, if the people of the United States, should become *jealous of the amending the constitution*; and therefore this species of jealousy so industriously attempted to be excited, is calculated if it could operate, to bring upon them the utmost calamity. Abuses of a political system will happen; and amendments only can meet abuses. Public opinion, and not an idolatrous tenet, is the element of our policy; and however the gentleman from Massachusetts (Mr. Pickering) may *deride the opinion of the people*, it is the element in which our policy is rooted, and which can at all times be safely entrusted with moulding their form of government.

MR. PICKERING here explained.

Sir, I quote gentlemen's ideas and not their words; is it not true that the gentleman ridiculed a recommendation of this very amendment, even from a state legislature, because of some grammatical inaccuracy; and that he reasoned against the possibility of knowing what the public opinion was; and yet, however inaccurately it may be expressed, that gentleman certainly has had sufficient evidence to convince *him*, that *public opinion* is really a *noun substantive*.

It has been urged, sir, by the gentlemen in opposition, in a mode, as if they supposed we wished to conceal or deny it, that one object of this amendment, is to bestow upon the majority a power to elect a vice president. Sir, I avow it to be so. This is one object of the amendment; and the other (as to which I have heretofore expressed my sentiments) is to enable the electors, by perfecting the election of a president, to keep it out of the house of representatives. Are not both objects correct—if, as I have endeavoured to prove, the constitution in all cases wherein it refers elections to the popular principle, intended that principle to act by majorities? Did the constitution intend that any minor faction, should elect a vice president? if not, then an amendment to prevent it, accords with, and is preservative of the constitution, permit me here again to illustrate by an historical case. England in the time of Charles the Second, was divided into two parties; *protestants* and *papists*; and the heir to the throne was a *papist*. The protestants, constituting the majority of the nation, passed an exclusion bill; but it was defeated, and the minor papist faction, in the person of the duke of York, got possession of executive power. The consequences were,

domestic oppressions and rebellions, foreign wars occasionally, for almost a century, and the foundation of a national debt, under which the nation has been ever since groaning, and under which the government will finally expire.

Had the majority carried and executed the proposed exclusion of James II. from executive power the English would have escaped all these calamities. Such precisely may be our case. I beg again that it may be understood, that in this application, I speak prospectively, and not retrospectively.

But it is far from being improbable, that in place of these religious parties, political parties may arise of equal zeal and animosity. We may at some future day, see our country divided into a republican party and a monarchical party. Is it wise or according to the intention of the constitution, that a minor monarchical faction, should, *by any means*, acquire the power of electing a vice president; the possible successor to executive power? Ought a republican majority to stake the national liberty upon the frail life of one man? Will not a monarchical executive, overturn the system of a republican executive? And ought the United States to shut their eyes upon this possible danger, until the case shall happen, when it may be too late to open them?

Sir, let us contemplate the dreadful evils which the English nation have suffered, from the cause of investing executive power in a man, hostile to the national opinion; and avoid them. They suffered, because their exclusion bill was abortive. Election is our exclusion bill. Its efficacy depends upon its being exercised by a majority. It is only a minority, which can render election insufficient to exclude monarchical principles from executive power. It is against minority that election is intended to operate, because *minority is the author of monarchy and aristocracy*.

Shall we sir, be so injudicious, as to make election destroy the principle of election by adhering to a mode of exercising it, now seen to be capable of bestowing upon a minority the choice of a vice president? Shall we make election, invented to *exclude* monarchy, a hand-maid for its *introduction*? Or shall we if we do not see monarchy at this day assailing our republican system, conclude that it never will; altho' we know that this system has but two foes, of whom monarchy is one?

No, sir, let us rather draw instruction from the prophetic observations of a member of the English house of commons, whilst the bill for excluding James II. was depending ; who said :

“ I hear a lion in the lobby roar  
 Say, Mr. Speaker, shall we shut the door,  
 And keep him there ? Or shall we let him in,  
 To try if we can get him out again.”

Instead of shutting the door, the English left it open ; tyranny got in ; and the evils produced by its expulsion, to that nation, may possibly have been equal to those which submission would have produced.

Sir, much has been said about the rights of minorities, and the tendency of this amendment to keep up party spirit. I wish I could hear these *rights of minorities* defined. It is easy to comprehend the justice of the position, “ *that every individual in society, has equal rights, whether he belongs to a majority or a minority ;* ” but the idea of a minor faction, having political rights, *as a faction*, to me is incomprehensible. On the contrary, I consider all minor factions, as inflamed, excited and invigorated by a prospect of success ; just as the popish faction in the period quoted of the English history, was kept alive and propelled to make attempts, which they never would have made, had it not been for the excitement arising from a prospect of gaining possession of executive power ; so here, if at a future day, a minor and monarchical party should arise, that also will be propelled and excited, by the chance of getting possession of executive power, to keep party spirit alive, and to make attempts, which they never would have made if no such excitement existed. Hence the amendment, if it will have the effect of depriving a minor faction of the possibility of getting possession of executive power, will suppress and not provoke party and faction.

Mr. President, we have been warned by a picture of the evils produced by the French revolution, to forbear to amend our constitution ; for what end I am at a loss to conjecture. Sir, how are these arguments intended to apply to the people of the United States ? If the state of national information in France, has disqualified the great mass of that nation for the enjoyment of self government, does it therefore follow, that the people of America are disqualified for self government ? If this state adapts the French nation for the species of government now existing in France, does it follow, that we are adapted

for a similar government? Sir, it is our superior degree of national knowledge, which enables us safely to use national opinion as an element of government. This is evinced by facts. In France, constitutions were several times made and amended, without producing good effect; in America, constitutions have been in many instances, perhaps to the extent of *sixty* or *seventy* made, repeated and amended, without producing the least disturbance or evil effects in a single case. Changes in France, even often for the worse; here, generally, and perhaps constantly for the better. It is because the public will is here rooted in a sufficient degree of public knowledge, to preserve a moderate and free government. Shall we sacrifice this will, and the right to amend our constitutions, to a species of metaphysical idolatry, although we owe to these sources all the prosperity and happiness we now possess. For the doctrine; "that it is a species of political sacrilege to amend constitutions, and that the people should be jealous of every such attempt;" is precisely the best means to destroy the right in the people to do so. It is a doctrine levelled against the people themselves, under the predominance of whose will the right can only be exercised; and tending to throw this mode of national self defence against the arts of avarice and ambition, into the back ground; whilst these foes can carry on their incroachments upon liberty and property, by form of law. Let not then, sir, the people of the United States be deterred from exercising their right to alter their constitutions, so frequently and so successfully exercised, by a picture of the French revolution.

Finally Mr. president, this amendment receives my approbation and support, because I think it conformable to public opinion, evidently the special recommendation of sundry states, and the concurrence of a great majority of the representatives of the people in the other house; because it accords with the principle of self government that this expression of the public will should be obeyed, that the right of the nation to amend the form of its government, should, upon that ground, be solemnly recognized; because elections the result of preference, are more consistent with moral rectitude, than those influenced or guided by intrigue, party artifice, or the intrigues of diets; and because it was the intention of the constitution, that the election of a presi-

dent and vice president should be determined, by a fair expression of the public will by a majority, and not that this intention should be defeated by the subsequent occurrence of a state of parties, neither foreseen nor contemplated by the constitution or those who made it.

GEN. JACKSON—the gentleman from Connecticut has alleged that the Georgia electors had consulted him, and that there was an intrigue, and seemed to insinuate something about bribery; I expect that gentleman will explain himself.

MR. TRACY said he had meant no improper imputation whatever on the gentleman's character; the gentleman had talked of his being at a meeting of gentlemen in Georgia, and that a letter had been received which changed the intentions of the Electors; and he had also talked of intrigues, and it certainly appeared as if there had been something more than ordinary election proceedings when the intention was changed by a letter. He then observed that the hour was late, and moved that the house, when it adjourns, adjourn to Monday.

The question was lost.

It was then moved that the house adjourn now—the question was taken and lost by a large majority.

MR. BUTLER hoped gentlemen would not do one thing and tell us another; after hearing them for several hours; after sitting without refreshment from eleven to now near six; will not gentlemen afford us an opportunity to deliver our opinions upon this subject: are gentlemen afraid of argument? Or do they wish to press us to debate when this state of fatigue renders it scarcely possible to do justice to the subject or ourselves. As gentlemen proceed thus, he could not avoid using strong language, and must say that he conceived such conduct grievous and oppressive, it was almost tyrannical. There were other gentlemen beside himself who wished to offer their opinions, and he hoped they would not persist in forcing a great portion of the representatives of the states to a vote without a hearing at this late hour. He moved an adjournment.

DR. LOGAN—as the gentleman wished to give his opinion, he hoped the house would adjourn.

On the question—yeas 12, Noes 15.

MR. HILLHOUSE was sorry that after so long a debate he should be obliged to trespass on the house, and

perhaps be obliged to repeat arguments with which the house was already familiar. But the extraordinary speech of the gentleman from Virginia was such, that although much fatigued, he could not pass it by without notice. He agreed with that gentleman, that there was danger of this government being destroyed by idol worship ; the framers of the constitution foresaw and made provision against it. But there are more kinds of idol worship than one ; the republics of antiquity will bear witness by their ruin, to the existence of this destructive idolatry. It is that idol worship, I fear, which blinds the gentleman himself to the consequences of this amendment, though in general he would allow him to be distinguished for candor and fairness, and for which he admired him. What is the position which the gentleman lays down and avows ?—That it is his purpose to prevent a minor faction from carrying a vice president into that chair. Had the gentleman laid aside all consideration of what the constitution intended ?—Does it not say that two persons shall be voted for as president ? And what was the object of this, but to afford the minority an opportunity of putting in one of the two. But gentlemen will say this is not reasonable ; he thought differently ; it was to prevent this idol worship, and to make the majority look about them ; it was to prevent any one state domineering over the rest, or attempts of particular states to carry their idol at all risks ; for this purpose two persons were directed to be voted for. Your amendment proposes to persuade the people that there is only one man of correct politics in the United States—your constitution provides a remedy against this, and says you must bring forward two.—If the majority will select two and bring them fairly forward, how is it possible for the minority to bring any forward with effect.

He would suppose a case, that there is in a particular state a man who in every view is entitled to the highest respect ; and so popular as to be beyond the reach of competition ; according to the laws of some ancient republics he would be condemned to the ostracism—and banished ; this was the punishment of the most virtuous and meritorious men ; they were banished because their popularity made them dangerous to the liberties of the republic—because in short he was in danger of becoming an idol. Our constitution more wise and just has provi-

and a more safe and effectual remedy ; no man can become too popular ; for if there is a portion of the people who are disposed to be infatuated, the constitution provides there shall be two candidates, and those who are not infatuated can chuse a man perhaps not so popular, but probably possessed of equal talents for the station.— Had the convention supposed two religious sects as the Protestants and Catholics, and that there should be a candidate from each sect, the gentleman's arguments, drawn from the English exclusion bill, would be parallel. But here they have the right to chuse two Protestants, or two of any sect—and the comparison of course is not perfect. What avails it that the minority should propose a Catholic, if the Protestants have a majority. They may select two Protestants and the two will have the major vote.

The time was very remote, he believed, when it would be in the power of any man to wrest the power out of the hands of the people of this country ; but get this alteration made, and you never get back to so safe a station again. At some future day an artful and powerful man will rise, as has been the case in all nations, and by this alteration of the constitution if he can command a majority of votes, he will take possession of the executive chair, and your liberties are gone ; for the people of no nation have ever knowingly destroyed their own liberties.

When a whole society has become acquainted with its constitution, changes in it are dangerous ; every change you make renders the knowledge of it uncertain to the people ; and the uncertainty is equally pernicious as ignorance, for after successive changes, is the time for an usurper, and then the friend of the people who had stolen away their hearts, under the pretence of preserving their liberties, steals them away too. But now as our constitution stands, you have every guard against ambition ; no man can corrupt the whole people ; and if you put up two candidates the second will be preferred to the first, if there is any danger to be apprehended from him.

When we wish to promote a particular object, we are too apt to view it only on one side. The gentleman from Virginia had compressed the object of amendment in one expression—he wished to prevent a minor faction from choosing a vice president. The gentleman from Tennessee (Mr. Cocke) had avowed the same sentiment in still plainer terms.

It was most certainly a wise principle to guard against evil; but wisdom requires that there be a just apprehension or a real evil. He did not believe that a federal vice president was an evil of any kind; the gentleman had indeed talked of armies, debts, patronage, and so on; but what concern have the senate and house of representatives in those evils? They have not the command of armies; no member of either house can be appointed to them; the evil apprehended from these things can only attach where the command devolves upon some ambitious man, as the gentleman (Gen. Jackson) said, above impeachment.

He was sorry the gentleman had made use of such epithets as the *minor faction*. He believed when that gentleman was in the minority, he did not think himself a member of a faction; difference of opinion does not constitute faction; and a free government always implies the right of free opinion. He was in a minority, but he disclaimed faction.\*

MR. TAYLOR had before stated that his arguments were wholly prospective; not present or retrospective; but founded upon a presumption that at some *very remote* time, there may be a *monarchical faction*.

MR. HILLHOUSE was glad of the explanation; for it could not be supposed that he was a monarchical politician, nor the section of the union which he came from, disposed to monarchy; he would never consent to put up any man as a candidate for office who was in favor of monarchical principles; there were men enough in this country always to be found without taking up men of that description. But how will gentlemen reconcile their dislike to monarchy with their dislike of federalism also. The expression is to prevent a federal vice president being elected; this comes nearer home than monachism. Is not every friend to this government a federalist—is not our government a federative republic. The habits and feelings of every man in this country are strictly republican; he was not indeed an Utopian republican, nor could he flatter himself that the time would ever arrive when every man would think alike; he should

\* It may be recollect, that this epithet *faction* was employed like many other epithets, such as *disgraced minister*, by Mr. Pickering when in the plenitude of his might; Mr. Taylor had not this in mind—this Mr. Pickering is now in the *minor faction*!

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rejoice to see such a time, but believed it would not arrive before the millenium, and was alike the creation of an heated brain. There may be degrees of party spirit—more or less asperity—but there never will come a time when party spirit will not exist; never will come a time when there will be no ambitious men aspiring to power. In the present time gentlemen are perfectly able to place two persons of their own opinions in the two great offices. The minority cannot do it. What is the evil then which calls for this amendment? Is it from a fear that the minority may bring forward a monarchical character? He would not undertake to characterize those who brought forward a man whom they never intended for that office. If they have done an improper thing, bought wit is best; but he hoped that gentlemen would not do away the salutary checks of the constitution.

MR. DAYTON to the gentleman from Virginia we are indebted for two lessons in ethics; formerly he advised us to moderation, in the language of passion; and now he tells us that a violation of the constitution is a case of strong morality; while on the other hand the gentleman from Tennessee had nothing farther to say in a speech of an hours length. He would follow the moderate advice in earnest, but he hoped he would be permitted to mourn over the departed dignity of that house.

He would repeat to gentlemen what they had so often heard in this debate, that this venerated constitution was the result of compromise—and you are now about to deface it. This great point, the most difficult which the convention had to determine, the succession to executive authority, is about to be disturbed, and subjected to all the guilt of popular passion and political intolerance. Never was there a more wise opinion uttered, than that in amending the constitution, you are not to consider so much what the constitution ought to be, as what it is. Superficial men may doubt this—but it is a solemn truth.

Gentlemen should consider, that in framing this constitution, a due regard was had to the wealth of particular states at that period; three fifths of a particular species of population was taken into the distribution of representation. If that principle were to be fixed now, would the same distribution upon the ratio of wealth take place? Would it be said that Massachusetts or other eastern states are worth less than others, who have

a representation extraordinary on account of wealth. Yet upon such principles is the constitution established, which you now wish to disturb. If it takes effect, those states will claim this representation of wealth also.

The gentleman from Maryland (Gen. Smith) disclaimed the existence of combinations and clashing of states. He presumed this was because there was no law, no regulation on this subject in the statute books, because it is not matter of record. But why are there no laws? Because the constitution has provided equivalent checks. If a combination begins in the large states, it is checked here; if in the small, it is checked in the other house. But does it follow that when you alter your constitution no such combinations will take place? He had often thanked God, that there was one sanctuary here not to be profaned by the unhallowed feet of amendment makers—but now even this profanation has arisen!

He had heretofore viewed the seventeen states like planets moving in their orbits, equal in dignity but disproportionate in size; revolving in one great system round the federal centre. Henceforward he must view them converted into satellites revolving in a contracted circle, and actuated by no concord or like principle of action.—For himself, for the people of Jersey whom he represented, he would protest against this amendment; his constituents were too proud to submit to it.

MR. PICKERING said, that on a former day he observed that the subject of amendment had been but superficially considered by the people; it had not attracted their attention generally; and where it had been taken up by the legislature of New York, not a grammatical error, but a palpable absurdity had been recommended. In fact the amendment was predicated upon one man being voted for, yet it stated that if *two* had a majority certain provisions ought to be made. This was impossible two could not have a majority. He was aware that formerly it had been thought by some that there was an inconvenience in the present form of choosing two persons; but he did not see it; and at that time some distinguished men reprobated the idea. But for years it had not been attended to, and he believed it would not be denied by his brother farmers, if he was to say that they were no better informed than himself. He must think that the people's voice is not easily known.

In the debates it was said, that if some one had not given way, at the late election for president, a civil war

would have taken place ; and the gentleman from Georgia (Gen. Jackson) was among others ready to have decided the question at the point of the bayonet.— He had hoped the people were not yet so corrupt, as to be capable of involving themselves in civil war for one man. He had heard high eulogiums lavished, great characters drawn in orderly words ; but we had an aptness in our nature to blind our own judgements and people will differ in opinions as to persons while the world is a world. He had a feint recollection somewhat in point.

Some think Heaven's own spirit on Calvin fell  
While others think him the instrument of Hell.

It was avowed, he thought with more simplicity than discretion, that not only the president must be chosen of the same political opinions, but that the minority shall never, to the end of time partake of the election of those two officers. But he recollects the saying of a venerated authority, to be just we must be reasonable ; and though majorities may be overwhelming, minorities have their rights too.

In framing the constitution, great pains were taken with this part of that instrument ; for a long time, it was contemplated to have the executive chosen for seven years, and the person to be ever after ineligible ; but towards the close, the present plan was introduced, and was soon more admired than any other feature of the constitution.

When he came into that house he was unprepared to form an opinion on this subject ; and had it been precipitated, he should have remained so, and could have voted only from the repugnance he always felt at the introduction of novelties ; or by the reliance which he should place on the opinions and patriotism of others. But upon the fullest conviction, after examination, he was now ready to vote against it. After what has been so ably said by the gentleman from Connecticut, (Mr. Tracy) he could add but little to the argument. When we were colonies, we had governors and lieutenant governors, many states have preserved the form, and they always designated. But why was not that plan adopted ? Because the colonial officers were elected but for one year ; and if the lieutenant governor chosen proved to be a man of inferior talents, one year could not do great mischief. But in the government of a great nation, the

period of four years is as small as could be eligible ; and the same reasons that would render the choice of a suitable person for the one office applies to the other, who may succeed to the same station. But the constitution never intended either should be designated on that account.

It has been often said the public mind is made up on this subject ; that the public will requires it. But he supposed, this public will, is founded on opinion ; and for his part he did not believe the public mind well informed ; no one ought to be influenced then unless this will were properly expressed ; and each member should therefore act according to his own idea of good. Perhaps the public mind may mistake or is under a delusion ; it is our duty to check the delusion and preserve the constitution from the mischiefs that may result.

GEN. JACKSON—the gentleman last up has thought proper to notice what he had said would have been the effect of the meditated usurpation at the last election ;—he assured that gentleman, that however much he might plume himself on his own virtues ; that the people of Georgia would not take their ideas of the course that ought to be pursued when their liberties were at stake from any other source than the principles of virtue and freedom. The gentleman had also thought proper to notice what he called an eulogium upon the present chief magistrate. His language was too humble and inadequate for that great and good man's eulogium ; it was far beyond any form of words which he could employ, to express the veneration which he felt for him ; and he believed that excepting only the departed Washington, no man ever possessed or merited more of the affection of the people of America than he did.

But not content with noticing my tribute of truth which the occasion called for, and which the gentleman questions ; he has given the senate, what it was to be supposed he intended for poetry ; he would not compliment him on his taste for selection, any more than on his liberality. The verses are bad enough, and the application worse ; they reminded him of the speech of Moloch, in the second book of Paradise Lost. But taking his verses as they are, he was content to believe the first ; the gentleman might if it could console him, believe in the second. For he did believe that the President's virtues were a hell to him.

The zeal of Georgia appears to be a matter of surprise to the gentleman. But it is by no means surprising. Why was that state so anxious for a change of administration? Under the former administration her rights were violated, her government treated with studied insult. In discharge of his duty as governor, he could scarcely get an answer on public business from the department of state, at the head of which that gentleman (Mr. Pickering) was then placed. Under that administration state rights were degraded and disregarded; we saw the principles of the revolution brought up as topics for reproach, and we saw that we had no chance but in the resort to first principles—we looked up to the author of the Declaration of Independence, he has not disappointed us—would to God I were capable of doing justice to his eulogium.

MR. WHITE proposed an adjournment; he feared the fatigue would create irritation; some warmth had already been displayed—

On the question being called (10 minutes past 7) it was lost.

MR. WRIGHT would offer but a few words. It had been observed that our government is the result of a compromise. So are all federal governments. The reference to the old confederation and their voting by states amounted to nothing conclusive; the old congress possessed no legislative power, they had only an executive and recommendatory power. The constitution was produced by the necessity of the case; no impost could be levied by the old congress, and to preserve the benefits of the revolution Virginia called the convention. He could not account for the opposition of the gentleman from Delaware, as he would not strike the amendment out if it formed part of the constitution.

MR. WHITE—The gentleman misapprehended my expression.

MR. WRIGHT—I took the gentleman's words down—they were these—“ If the amendment formed part of the constitution I would not vote for striking it out.” He then went very largely into a recapitulation and reply to the various points of discussion, and asked if it was consistent with the principles of the government that our laws should be like those of the Medes and Persians, their form immutable and error eternal. He asked if gentlemen would not think it a hard case if men were

placed in the two first offices of government who were neither the choice nor agreeable to either party? Yet this would not be more inconsistent or absurd than to have any one man so placed contrary to the fundamental principle of representative government, the will of the majority. Every gentleman must recollect what a scene was exhibited in the legislature of Pennsylvania at the late election, which could have its origin in intrigues alone, and which ended at length in a compromise which gave the most populous state in the union the real value of no more than one vote; the same intrigues existed in Jersey, where an organized plan existed to place a man in the executive chair against the wishes of the nation, unchosen and unintended for the executive chair by either party.

Here we provide a remedy for such evils—we offer you the certain means of frustrating and rendering them hopeless; we offer you a designation. But it is said this is a party question. Gentlemen appear not to look round them; or to overlook facts staring them in the face, do we not see gentlemen of opposite parties in politics on both sides of this question? Is it from party views the gentleman from South Carolina opposes it?

He was as much a friend to the principles of a majority governing as any man, but here it was a different question which he thought principally concerned—it is to prevent the disgrace and injuries of intrigues; it is to prevent men not intended to be chosen from being edged into power. At the last election what did we see? An attempt made by a party in truth hostile to the man at that time, endeavouring to put him into the executive chair! And for what purpose? For the purpose of confusion—to distract and divide the country, and to lay the foundation of another factious administration on one already humbled by public indignation. Had they succeeded in corrupting a single man from his duty, would it not have been usurpation of the worst species. What did his colleague say, that after this project of wrong had failed, another was meditated, it was even supposed to set up a man who had not a single vote, and that had they attempted to carry it into execution, the people would not bear it. And the gentleman from Connecticut expresses his astonishment that the people would not bear usurpation, while he confesses that his section of the union would have been quiet spectators of the act! He knew that the people of Maryland felt

the danger and were determined to resist it, not with their arms folded but with energy of freemen, and such was the sensation which the meditated wrong had occasioned, such was the spirit of the people to resist it, that some of the most opulent men in the state found it time to interfere.

This amendment then is intended to prevent the recurrence of such alarming dangers. Does it deprive any one or any state of a right? Is it not fit, that if I am called on to vote for president and vice president that I should have my free choice? Is it then consistent with reason that I should be compelled to vote for one man upon equal terms whom I do not think has equal talents or equal claims to my confidence? Is it fair that I should be reduced to the alternative of choosing a wise man and a fool, in order to give the former a chance. Are not the small states as well secured by this amendment as the large? If this amendment was not intended why has it not been guarded like those parts which cannot be changed before 1808? In this senate the small states have their security—their equal representation, and in the provision against any change being made in their representation here without the consent of each.

The gentleman from Massachusetts (Mr. Adams) has drawn all his eloquence in force, he has collected all his vengeance, and pours out the vials of his wrath upon Virginia. Why this vehement, this toothless rage against that state, which in evil times had indeed stood firm, the rock of our political salvation; to whom we looked in the hour of adversity for counsel, for succour, for statesmen and leaders of our armies. To her we were indebted for a Washington, and is it because we are indebted to her for other great men that this jealous rage is vociferated against her. Is it to be supposed that with her 24 votes for president she can controul all the rest? We hold the true federative counterpoise, the other house has the democratic or popular, for he knew no difference Nine or ten are destined to be small states, and will always have a majority here? Gentlemen when they cannot make good their case by argument or fact, endeavor to make it out as well as they can. Hence we have the declamation about small and large states, and hence so many warnings against touching the constitution. But who are they who wish to tear up this constitution? Two propositions have been offered of in-

nitely more force on the principles of the constitution—one to abolish the office of vice president altogether, the other to limit the election of president. We wish to provide against an evil not foreseen, and to supply the deficiency; the gentlemen wish to tear a part of the constitution altogether. And who have proposed and advocate these erasures? The opposers of this amendment. So that when reverence for the constitution is spoken of these amendments must be abandoned. Experience, sir, is worth a thousand volumes of experiments. Had it been foreseen at the last election, that such events could have proceeded from the principles of honor and good faith being rigidly observed by the republicans, many would have opposed their uniform vote and cast their vote away rather than lay the country open to intrigue and its consequences.

He had thought the number five would equally answer the purposes of election. Arguments had convinced him that three would be still more safe; because it would give the greater certainty of a choice by the people. And was there a man in that house who would dare to say that the people ought not to have the man of their choice? They look for the security of that right, and the principle of designation secures it. Is there any man who as an elector would prefer the uncertainty of two for the certainty of one. Some affect to say we strike at fundamental principles. But we say we wish to strike at error and give stability to republican representative principles. The constitution says the president shall be chosen by electors; he believed there was a militant spirit against democratic republican principles which would take the power from the people and their electors, which would fly in the face of the constitution itself and tell the people it ought not to be amended; that error should be perpetual, and experience fruitless; this was notoriously avowed. Our greatest blessing and our first pride is that we have the power and the right to amend, and to redress wrongs without the resort to arms which nations are ever exposed to, where abuses are rendered sacred and hereditary. On the subject of this amendment so far as it concerns designation, he believed the public mind could not be better known; could three fourths of our legislatures and two thirds of both houses of congress commit treason and treachery on themselves. He was decidedly for the amendment, and for the number 3.

MR. WHITE—the gentleman says the old congress had no legislative powers. Did they not raise armies, emit money, both high legislative acts?

MR. WRIGHT—the gentleman is wholly mistaken, the several states raised armies, and monies were raised by state contributions—all the power they had was to recommend to the states and make requisitions upon the state grants.

The question on inserting the number 3 was put (at ten minutes past 8 o'clock P. M.) and carried—21 yeas 11 nays.

MR. DAYTON asked if the question could be taken on the whole of the designating amendment, without deciding upon the remainder of the report? \*

MR. BUTLER you assuredly cannot decide upon the first part without deciding upon the whole of the report, unless you do it by power; and you can do any thing, as judge Blackstone says, by power, but make a man of a woman. Power, however, appears to be the order of the day; tho' he hoped the chair will do so much justice to himself as to acknowlege that we have been hitherto in a committee of the whole. Some gentlemen had spoken so often as nine or ten times in the debate, and in the house that would have been contrary to order. The object of his wishes was to probe innovation. If we have hitherto been in a committee of the whole, as this is only a part of the report, of course it will stand as it is, and we may proceed to the remainder of the report. Tho' from what he had already seen he did not expect the indulgence that he thought was due to every member of that house; and it was not impossible that it was meant to press into a different course. If so, gentlemen

\* This question had reference to the following amendment proposed by Mr. Butler for limiting the period for which a president should be elected, and which was not acted upon.

*"Resolved*, by the senate and house of representatives of the United States of America in congress assembled, Two thirds of both houses concurring, that the following amendment be proposed to the legislatures of the several states as an amendment to the constitution of the United States, which when ratified by three fourths of the said legislatures, shall be valid to all intents and purposes, as part of the said constitution, to wit:

"That no person who has been twice successively elected president of the United States, shall be eligible as president, until four years shall have elapsed: but any citizen who has been president of the United States, may, after such intervention, be eligible to the office of president, for four years, and no longer."

should look to what the people of the United States would say, when they see the doors closed against all dispassionate discussion and all opportunities open to one side only of the house. There was an example of this kind given by the colonel on his left (Mr. Cocke) who after making a speech of an hour sits down and roars out the question the question. Unless gentlemen mean to practice the same indelicacy as two hours ago.

THE PRESIDENT wished to interrupt the gentleman for a moment—barely to inform him that the question has never been before a committee of the whole.

A desultory conversation on the point of order here took place, in which Messrs. Nicholas, Butler, Tracy, Gen. Smith, Dayton, Taylor, Franklin, Hillhouse and Adams spoke a few moments each. In which it was contended that the *first amendment* could not be decided on without first deciding on the *second amendment* which was reported by the same committee.

On the other side it was maintained that the amendment for designation was a separate proposition, and might be voted upon, whether the other was voted upon or not; that the other amendment might be called up at any time without interfering with the principle or the passage of that now before the house.

The president decided that the question now was on agreeing to the resolution as amended. Upon which the yeas and nays were demanded and were as follows.

YEAS,

Messrs. Anderson,	Condit,	Potter,
Bailey,	Ellery,	Ts. Smith,
Baldwin,	Franklin,	Sam. Smith,
Bradley,	Jackson,	John Smith,
Breckenridge,	Logan,	Stone,
Brown,	Maclay,	Taylor,
Cocke,	Nicholas,	Worthington,
		Wright—22.

NAYS.

Messrs. Adams,	Hillhouse,	Plumer,
Butler,	Olcott,	Tracy,
Dayton,	Pickering,	Wells,
		White—10.

Mr. ADAMS thought it proper for him at this stage to notice some observations directed to him. It had been presumed that he had expressed some solicitude about the election of a federal vice president; he had expressed nothing which could countenance a solicitude about the election of a federal or anti-federal vice president; but

he had indeed noticed that the amendment appeared to him as intended directly to affect the next election ; tho' at the same time as far as related to himself he turned out of the consideration every idea of its effect on any single case ; he looked to it as it would affect a century to come—he never meant to take the diameter of the earth for the measure of a barley corn. The gentleman from Maryland (Mr. W ight) had charged him with pouring out the vials of his wrath on Virginia ; he was not conscious of uttering any degree of wrath against Virginia, and could not be persuaded that he had uttered what he certainly never felt, so far from wrath he had ever entertained for that state the highest respect, as producing the greatest men of our revolution. It was true indeed that when he heard a gentleman from that state holding forth what he had then considered as a menace, he had felt some irritation ; and when he compared it with the mould and process of the measure before us that was increased ; and had he not been convinced that no menace was intended by subsequent explanations he should have entertained a serious alarm. His impressions were generally on the subject, that no regard has been paid to the permanent operation of the measure, but that all argument has been drawn from the last, and all consequences are calculated for the next election. From the open avowal of the gentleman from Maryland (Gen. S. Smith) to the laboured, ingenious, and eloquent arguments of the gentleman from Virginia (Mr. Taylor) all had this tendency and that view only.

To the designating principle itself he had no objection, and believed it calculated to be productive of good. But when he heard gentlemen talk of the jealousy of states, he had little expected to find a mixture of argument drawn from English corruptions and degeneracy, applied to our home institutions. When jealousy of executive power was spoken of, so much like the unmeaning noise out of doors, he had expected that after adding fifteen millions to the public debt at a blow ; when 80,000 men were proposed to be placed at the will of the executive—when by four short lines the whole of the arbitrary power of the Spanish king over his subjects in Louisiana was transferred to the executive with all the consequent patronage, he did not expect to hear armies, debts and patronage introduced in the debate. When declamation of this kind is given, the best return that can be expected is declamation of the same species.

GEN. S. SMITH had not intended at any hour to have taken a further part in this debate ; but when he found gentlemen resorting to stratagem when sound argument failed them, and words and sentiments are tortured from their intention, he could not remain silent. It requires very little ingenuity to lop off a part of a sentence even in scripture, and to make the remainder blasphemy ; though the whole sentence as written were the most solemn truth. The gentleman from Jersey, (Mr. Dayton) thinks it consistent, perhaps, to construe words which never had that meaning as a threat. He would beg leave to notice a mistake of the gentleman from Massachusetts, (Mr. Adams) who had charged him with an open avowal that the sole object of the amendment was to preclude the election of a vice president ; he had said that it would certainly have that effect ; and that the effect would be proper and conformable to the spirit and intention of the constitution ; and he approved of it for that reason, for under the existing mode the people who wished to secure a proper person, or that person in whom they have the greatest portion of confidence, would be obliged to throw their votes away, and make no choice of the second officer, or leave the choice to chance. But how could the gentleman say himself, or think him guilty of the absurdity, in supposing that this amendment originated and was conducted solely with a view to the next election, and that only ; or that all arguments were drawn from the last election ? If he recollects correctly, the subject of this amendment was brought forward several years ago, by the representative of a small eastern state, Mr. Abiel Foster, of New Hampshire. At that period those persons were of the predominant party. But they tell us it was not then carried. And why not ? Most probably because they could not find members convinced of its necessity, it was proposed before the last election, and that event has convinced every one who before doubted. After all, if the legislatures do not think proper to adopt it, it cannot pass.

MR. TRACY—we are told this is a proposition for the legislatures ; but will its passage through congress have no influence on the votes of the states, will the legislatures not say *two thirds* of both houses of congress passed it, and they would not deem it necessary if it was not good. But here we have legislatures prompting us to this

measure, and it goes back to them again for their decision ; that this is a measure, a measure in a hoop, it comes and goes whence it came

The gentleman complains of attacks made on Virginia. it was never meant to reproach Virginia. But the gentleman tells us we must make an exclusion bill, and he tells you of the consequences if you do not, in order to induce you to pass it. He admired the gentlemanly manner, the openness and good nature, and he was certain that he never meant to kill us outright, but he will exclude us. We know very well what was intended by the bill for the exclusion of popish recusants, and that with regard to the objects of the measure we stand precisely in their place. This was the very condition of the gentleman ; he supposed a minority had no rights, beside that of being trampled upon—and he is for bringing in a bill of exclusion. He says he does not quote words, he caught ideas not words.. He has given a key for his ideas—they go to the total extirpation of the sect of federalists—as the exclusion bill went to the total exclusion of the sect of popish recusants.

If gentlemen wish to shake the constitution to pieces, if majorities must decide every thing, why not go at once to a simple democracy. There were many who did not think the constitution sufficiently democratical. The gentleman thinks so perhaps, for he tells that a constitution may be preserved while the liberties of the people are destroyed ; he wishes you to go to the spirit which is democracy, and against which we guard. But he would not consent to go to that spirit for his remedy.

MR. BRECKENRIDGE—the gentleman last up, had insisted on two or three arguments before repeated, that he thought proper to notice him. He insinuates that we are destroying principles. But the gentleman has lost sight of the amendment altogether, where no principle is in the smallest degree violated. He has indirectly questioned the democratic principles of the constitution ; but in the course of three weeks discussions, for the first time he had heard any thing even glancing at a denial of the people's right to chuse the executive thro' the medium of electors. What is this clamour about large and small states ? It has nothing to do whatever with the question. The true and only point is what will be the best mode of effectuating the choice ; we hold that the amendment is that best mode. If any princi-

ple is more sacred and all important for free government it is that elections should be as direct as possible, in proportion as you remove from direct election you approach danger. And if it were practicable to act without any agents in the choice, that would be preferable even to the choice by electors. But if you wish to elect A and you are so placed as that B is elected contrary to your wishes can you say that this is a reasonable and just process. Has it not always been insisted that the two characters chosen at the last election were equally estimable. Why then was there any hesitation? Why has public opinion, so ready to declare itself, never uttered a sound of discontent at the issue, while the nation was almost in arms at the retardment of the choice. Had the now vice president been placed by whatever secret means in that chair, is there a man who now hears who would not say it was contrary to the intention of the people? If ever public opinion was more strongly known on any point than another, it is on this. Nine states he believed had testified their wishes on the subject. New Hampshire, New York, Vermont, Massachusetts, Tennessee, North Carolina, and Ohio, have in the most solemn manner recommended it. If the gentlemen from Massachusetts or one of them particularly (Mr. Pickering) are in doubt as to the understanding or information of their constituents on the subject, there can it is presumed be no doubt but the other house understand both the subject and the opinions of the people whom they so immediately represent. And this supposed ignorance is a reply to the gentleman from Connecticut. It is to be presumed if they are now ignorant, that when the amendment comes before them they will possess new lights—and that all danger will be avoided by their watchfulness.

MR. BUTLER had allowed every gentleman to speak, though he had early in the debate signified his intention to offer a few observations on this important subject, which it was his lot to oppose from a conviction of its injurious tendency. He had gratified himself in the opening of the discussion with the expectation that the regularity of proceeding would be such, that we should never more hear the voice of menace or of *civil war*, words which should never enter the walls of that senate any more than the most vulgar expressions. But the hour was late. But the gentleman from Kentucky says that

you should not remove the election farther from the people, and he appears to think that at the late election the disposition to place a man not intended in the chair, was the consequence of that form of proceeding. Whatever may be the sentiments or wishes of the individuals who vote, he could take upon him to say what was the intention of the constitution; the framers of that instrument were apprehensive of an elective chief magistrate; and their views were directed to prevent the putting up of any powerful man; that for this end the states should chuse two, and that as public suffrage would be common to both, that either would be alike eligible, and it was totally immaterial which—he feared that the election of a single individual might exhibit all the evils which afflicted Poland.

One observation he owed to the side he had taken in this debate, it had been suggested abroad that he had changed his opinion from being in favor to an opposition of the amendment. This was not so, for when the amendment was introduced he had avowed his purpose to oppose it. He was more confirmed when he heard arguments employed avowing the determination to remove every possibility of an election in the house of representatives, and for this reason that the smaller states having fewer representatives in that house, would be exposed to the corruption of any designing man, and they might be made the instruments of national ruin as the rotten boroughs of England have in the hands of the king of that country.

If the small states then are mere rotten boroughs, and their representatives liable to corruption, is the evil remedied by this amendment? He asked if only two were to be voted for and had equal votes would it not then go to the house of representatives as much as if there were five from which to make a choice. But the time which has been expended in this discussion has only served to render more conspicuous the anxieties by which it is pressed forward. A gentleman has asked us shall a factious minority give a vice president to the United States? Aye there's the rub! He had thought that the reproachful epithet of faction, that all heat and animosity of party should long since have been buried and the representatives of the small states he hoped would see that they were bound by duty and by feeling not to suffer the

votes to go along with those reproaches; for with that vote would pass a very material part of their sovereignty.

A great deal had been said to remove this idea of the jealousy of the states, and that it was only a stratagem set up for the occasion. Whatever gentlemen might say on that subject he would say to the small states, with the orator of Greece—“*Beware of Macedon!*” Beware of the great states! In this, however, there was one exception, he would exclude the state of Pennsylvania; and civil liberty was better understood and practised there than in any age or in any part of the world. He had, however, seen something very like this combination of states—and thought it behoved the small states to watch them, else they would monopolize the whole of the executive departments; and the moment that was accomplished, farewell to the republic, it would no longer exist—it would be succeeded by a high haughty aristocracy of states, with an executive moulded and accommodated to their views.

When you pass this you plant the seed of discord—the dissolution of federalism. He thought that after a contention of seven years, with a party who he had thought abused their power, the time was come, when a better course would have been pursued; he had conceived that principles would have prevailed, and that men would not absorb every consideration; but with a member of the convention he would say—I hoped after so long a course of pork that our diet would be changed, but I find it is pork still with only a change of sauce.

Pass this amendment, and no man can live in the small states but under disparaging circumstances—they will have about as many rights left in society as the Helots of Greece. And why is all this done? For the purpose of shewing one of the least becoming of the weak passions of man, *resentment*; you pursue a line of conduct reprobated by yourselves in the time of your predecessors. He was sorry the embers of party were kindled even by the very injudicious manner in which it had been supported. The best reflecting men see in this only the change of men without regard to measures; and that it had paved the way for a revival of the heats and animosities which ought to have been buried, but which may lead to a separation of the union.

The question was called for loudly at half past nine and put—the yeas and nays being taken, were :

## YEAS.

Messrs. Anderson	Ellery	Is. Smith
Bailey	Franklin	Sam. Smith
Baldwin	Jackson	John Smith
Bradley	Logan	Stone
Brekenridge	Maclay	Taylor
Brown	Nicholas	Worthington
Cocke	Potter	Wright
Condit		—22

## NAYS.

Messrs. Adams	Olcott	Tracy
Butler	Pickering	Wells
Dayton	Plumer	White — 10
Hillhouse		

Upon the president declaring the question carried by two thirds.

MR. TRACY said he denied that the question was fairly decided. He took it to be the intention of the constitution that there should be *two-thirds* of the whole number of senators elected, which would make the number necessary to its passage 23.

It was moved to adjourn to Monday.

MR. TAYLOR said that since it was proposed to adjourn to Monday, when he should be disqualified to sit in that house ; he hoped the senate would not rise without deciding the question definitively on the gentleman's objections.

MR. TRACY said he certainly would avail himself of the principle to oppose its passage thro' the state legislatures.

The president declared the question had passed the senate by the majority required, and conformable to the constitution and former usage.

Adjourned at 28 minutes after 10 at night.

## THE AMENDMENT AS ADOPTED.

Resolved by the senate and house of representatives of the United States of America in congress assembled, Two thirds of both houses concurring, that in lieu of the 3d paragraph of the first section of the second article of the constitution of the United States, the following be proposed as an amendment to the constitution of the United States, which, when ratified by three fourths of the legislatures of the several states, shall be valid to all intents and purposes, as part of the said constitution, to wit :

The electors shall meet in their respective states and vote by ballot for president and vice president, one of whom at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots, the person voted for as president, and in distinct ballots, the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of voters for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for president, shall be the president; if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March, next following, then the vice president shall act as president as in the case of the death or the constitutional disability of the president.

The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president—a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

## VOTES IN THE SENATE.

## YEAS.

Messrs. Anderson	Logan
Bailey	Maclay
Baldwin	Nicholas
Bradley	Potter
Breckinbridge	Israel Smith
Brown	John Smith
Cocke	Samuel Smith
Condit	Stone
Ellery	Taylor
Franklin	Worthington
Jackson	Wright 22

## NAYS.

Messrs. Adams	Pickering
Butler	Plumer
Dayton	Tracy
Hillhouse	Wells
Olcott	White 10

The resolution was sent to the house of representatives and on Friday the 9th day of December, the vote was taken upon it and the yeas and nays being called, were.

## YEAS.

Messrs. Nath Macon (Spk.)	Samuel L. Mitchell
William Alston jr.	David Meriwether
Nath. Alexander	William M'Creery
Isaac Anderson	Andrew M'Cord
John Archer	Matthew Lyon
David Bard	John B. C. Lucas
George M. Bedinger	Michael Leib
William Blacklegde	Nicholas R. Moore,
John Boyle	Thomas Moore
Robert Brown	Jeremiah Morrow
Joseph Bryan	Anthony New
William Butler	Thomas Newton, jr
Geo. W. Campbell	Gideon Olin
Levi Casey	Beriah Palmer
Thomas Claiborne	John Patterson
Joseph Clay	John Randolph, jr,
John Clopton	Thos. M. Randolph
Frederick Conrad	John Rea, (of Penn.)
J. Crowningshield	John Rhea (of Tenn )
Richard Cutts	Jacob Richards
John Dawson	Cæsar A. Rodney
William Dickson	Erastus Root
John B. Earle	Thomas Sammons
Peter Early	Thomas Sanford
John W. Eppes	Thompson J. Skinner
William Findley	John Smilie
John Fowler	John Smith (of N.Y.)
James Gillespie	Richard Stanford
Peter Goodwyn	Joseph Stanton
Edwin Gray	John Stewart

Andrew Gregg	David Thomas
Samuel Hammond	Philip R. Thompson
John A. Hanna	Abram Trigg
Josiah Hasbrouck	John Trigg
Daniel Heister	Isaac Van Horne
Joseph Heister	Daniel C. Verplank
James Holland	Matthew Walton
David Holmes	John Whitehill
John G. Jackson	Marmaduke William
Walter Jones	Richard Winn
William Kennedy	Joseph Winston
Nehemiah Knight	Thomas Wynns—84

## NAYS.

Messrs. Simeon Baldwin	Seth Hastings
Silas Betton	William Hoge
Phanuel Bishop	David Hough
John Campbell	Benjamin Huger
William Chamberlin	Samuel Hunt
Martin Chittenden	Joseph Lewis, jr.
Clifton Claggett	Thomas Lewis
Matthew Clay	Henry W. Livingston
Manasseh Cutler	Thomas Lowndes
Samuel W. Dana	Nahum Mitchell
John Davenport	Thomas Plater
John Dennis	Samuel D. Purviance
Thomas Dwight	Ebenezer Seaver
James Elliott	John Cotton Smith
William Eustis	William Stedman
Calvin Goddard	James Stephenson
Gaylord Griswold	Samuel Taggart
Roger Griswold	Benjamin Tallmage
Samuel Tenney	Joseph B. Varnum
Samuel Thatcher	Peleg Wadsworth
George Tibbits	Lemuel Williams 42





Deacidified using the Bookkeeper process.  
Neutralizing agent: Magnesium Oxide  
Treatment Date: Dec. 2004

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